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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC.,)
a Illinois corporation; and)
JENNIE-O FOODS, INC., a)
Minnesota corporation,)

Plaintiffs,)

-vs-)

No. CIV-01-347-C)

SWIFT-ECKRICH, INC., d/b/a,)
CONAGRA REFRIGERATED FOODS, a)
Delaware corporation,)

Defendant.)

COPY

VIDEO DEPOSITION OF ARNOLD S. MIKELBERG

TAKEN ON BEHALF OF THE PLAINTIFFS

IN OKLAHOMA CITY, OKLAHOMA

ON SEPTEMBER 7, 2001

REPORTED BY: JENNI L. GUNTER, CSR
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Also Present: Cheryl Coy - Videographer
David Howard

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1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed
3 by and between the parties hereto, through their
4 respective attorneys, that the deposition of
5 **ARNOLD S. MIKELBERG** may be taken on behalf of the
6 Plaintiffs on September 7, 2001, in Oklahoma City,
7 Oklahoma, by Jenni L. Gunter, Certified Shorthand
8 Reporter for the State of Oklahoma, pursuant to
9 agreement and the Federal Rules of Civil
10 Procedure.

11 It is further stipulated and agreed by
12 and between the parties hereto, through their
13 respective attorneys, that all objections, except
14 as to the form of the question, are reserved until
15 the time of trial, at which time they may be made
16 with the same force and effect as if made at the
17 time of the taking of this deposition.

18 It is further stipulated and agreed by
19 and between the parties hereto, through their
20 respective attorneys, that the time of filing of
21 this deposition is expressly waived.

22

23 * * * * * *

24

25

1 ARNOLD S. MIKELBERG,

2 of lawful age, being first duly sworn, deposes and
3 says in reply to the questions propounded as
4 follows:

5 * * * * * * *

6 EXAMINATION

7 BY MR. BAILEY:

8 Q Would you state your name, please?

9 A Arnold Steven Mikelberg.

10 Q It might be helpful if you would spell
11 your last name for us.

12 A M-i-k-e-l-b-e-r-g.

13 Q And what's your residence address, Mr.
14 Mikelberg?

15 A 1471 Wedgewood Drive, Lake Forest,
16 Illinois.

17 Q What's your educational background?

18 A Bachelor of Science, Michigan State
19 University.

20 Q When did you receive that degree?

21 A 1958.

22 Q And would you briefly describe your work
23 history since you graduated from college?

24 A When I graduated from Michigan State I
25 went to work for Highgrade Food Products

1 Corporation in Indianapolis, Indiana, and I went
2 from a trainee to a general manager of one of
3 their factories. And I left them in 1970, became
4 vice president of South Chicago Packing Company
5 where I was till 1971. I became a vice president
6 of a company called Package Provision Company,
7 which was a company that mainly dealt with beef
8 products. I worked with them in the Republic of
9 Haiti for one year.

10 I went to work as a vice president of
11 Thorn Apple Valley Incorporated in Grand Rapids,
12 Michigan. I was there until 1977 when I went to
13 work for John Morrell & Company as senior vice
14 president of processed meat operations. I was
15 there for 11 years.

16 I went back to work for Thorn Apple
17 Valley as executive vice president for -- and a
18 director until 19 -- from '88 to '94 when I became
19 president of Armour Swift-Eckrich, a division of
20 ConAgra. I retired from there in 1995, I think --
21 no, 1997 or somewhere in that area. I can't
22 remember exactly.

23 Q Is it -- is it fair and accurate to say
24 that you've spent your entire adult life in the
25 meat industry?

1 A Yes, it's very accurate.

2 Q And what do you do currently?

3 A I'm a consultant to the industry. I work
4 as a consultant for Smithfield Foods; I work for a
5 consultant for SMG, Incorporated; I work as a
6 consultant for Fresh Mark. Also I represent the
7 bondholders and creditors for a company called
8 Custom Food Products Corporation, and I also do
9 consulting for Farmland.

10 Q Well, being an old guy, the names Armour
11 Swift-Eckrich to me sound pretty formidable in the
12 meat industry. How did that come to be affiliated
13 with ConAgra?

14 A ConAgra, I believe -- and I'm not sure of
15 the exactness of this -- at one time bought SIPCO
16 from -- and then bought -- and then had -- ConAgra
17 already had Armour, and then they bought
18 Swift-Eckrich later on.

19 Q But that was all part of ConAgra when you
20 went to work, as president?

21 A That is correct.

22 Q Now, when you say president of Armour
23 Swift-Eckrich, what was your principal
24 responsibility?

25 A My responsibility, for profitability with

1 Armour Swift-Eckrich company and for Decker and
2 for Hebrew National, which was two other
3 companies.

4 Q And what was the relationship with
5 ConAgra when you became president of Armour
6 Swift-Eckrich?

7 A Armour Swift-Eckrich was a division of
8 ConAgra Refrigerated, which was a division of
9 ConAgra.

10 Q What -- give us some sense of the total
11 size of ConAgra.

12 A Of the volume?

13 Q Yes.

14 A I heard it was 21 billion, but I'm not
15 sure of that number.

16 Q And what -- give me some approximation of
17 the percentage of the totality of ConAgra that was
18 represented by Armour Swift-Eckrich.

19 A Probably, oh, it must have been -- Armour
20 Swift-Eckrich as compared to ConAgra?

21 Q Yes.

22 A Oh, about 6 percent.

23 Q Okay. And what was it that Armour
24 Swift-Eckrich did?

25 A Armour Swift-Eckrich was strictly a

1 processor -- a manufacturer of processed
2 refrigerated meat products, sausages, ham, canned
3 meats, et cetera.

4 Q Okay.

5 A Canned hams, et cetera.

6 Q What I have seen is the word
7 Swift-Eckrich. There's no Armour on it anymore.
8 What do you know about that?

9 A I don't know whether it's Armour
10 Swift-Eckrich or Swift-Eckrich today.

11 Q Okay. How long were you president?

12 A Of that particular division?

13 Q Yes, uh-huh.

14 A Oh, a little under two years.

15 Q Who was your second in command?

16 A My second in command was a fellow by the
17 name of Ted Berry.

18 Q What was his responsibility?

19 A He was responsible for the operations.

20 Q There's a name that I've seen,
21 Weatherspoon.

22 A He was in charge of research and
23 development and quality control.

24 Q When you went to work as president of
25 Armour Swift-Eckrich, what did you do to

1 familiarize yourself with what was under
2 development there?

3 A I met with J. B. Weatherspoon several
4 times, including a daily meeting that we had every
5 day. He pretty well kept me up to date with what
6 was going on in the research and development
7 field.

8 Q When did you first meet David Howard?

9 A I met David Howard at an IFFA convention
10 in Germany, and that had to be in 19 -- oh, '91 or
11 '92, somewhere in there.

12 Q And what was IFFA?

13 A No, it wasn't 1991 -- yeah, 1991 or '92,
14 somewhere in there.

15 IFFA is International Federation of --
16 it's a meat processing and equipment show that's
17 every three years in Frankfurt, Germany.

18 Q And what was the basis for your meeting
19 Mr. Howard at that time?

20 A He had a booth there, and we saw some of
21 his products and got his business card, and he got
22 ours.

23 Q When did you next meet Mr. Howard?

24 A Oh, about a year later he paid a visit to
25 our corporate headquarters in Detroit, and he told

1 us about what his plans were for working in the
2 United States.

3 Q Now, you said he met -- you met him about
4 a year later at your corporate headquarters?

5 A Right.

6 Q Corporate headquarters of what company?

7 A Thorn Apple Valley, Incorporated.

8 Q At that time you were at Thorn Apple
9 Valley?

10 A Right.

11 Q What did they do?

12 A We were pro -- we were slaughterers of
13 pigs, and we were manufacturers of processed meat
14 products, sellers, marketers.

15 Q And what interest did Thorn Apple Valley
16 have, if any, in David Howard's concepts and
17 ideas?

18 A Well, David was a manufacturer of
19 stainless steel cooking and items, and he made
20 different proposals to us of things to process
21 meats with.

22 Q Did you arrange -- did you arrive at any
23 business relationship with Howard at that time?

24 A Probably a little later we commissioned
25 him to do some work for us in our Grand Rapids

1 facility.

2 Q What work was that?

3 A He built some blenders; he build some --
4 he gave -- sold us stainless steel tanks; he built
5 conveyers for us during this period of time.

6 Q At issue in this litigation is a process
7 for browning precooked whole muscle meat products
8 and applying a liquid pyrolysis to the surface of
9 the meat and subjecting it to high temperature
10 without significant shrinkage. Are you familiar
11 with that process?

12 A Yes.

13 Q Where did you first see that process?

14 A I heard of the process -- David made a
15 visit to us in Detroit when I was at Thorn Apple
16 Valley and described the process to me that could
17 more quickly brown or coat bake-on coating on a
18 product than the way we were doing it at the time,
19 which was going right back into batch smokehouses
20 with it and resmoking it or redrying it or doing
21 what had to be necessary.

22 Q The way that you were doing it at the
23 time, was it something that took longer?

24 A It took much longer.

25 Q And was more costly?

1 A It was much more costly because you had
2 to have people putting it in, taking it out,
3 taking it off the racks, putting it on the racks.
4 The timing in the cookhouse was greater. And most
5 important of all, the yields were considerably
6 lower.

7 Q When you say the yields were lower, what
8 do you mean?

9 A If you put a hundred pounds in, you were
10 lucky to get 88 pounds out; but on this process
11 when you put a hundred pounds in, he explained to
12 us at this time, you could get 97 percent out,
13 which was a considerable improvement.

14 Q What is the year that you have reference
15 to?

16 A It has to be around '94. It was before I
17 left Thorn Apple Valley. It was while I was still
18 there.

19 Q Did you yourself ever observe the process
20 being demonstrated?

21 A Right before I left Thorn Apple Valley I
22 had made a visit to Manchester, and David showed
23 me the oven and how it was working.

24 Q Manchester?

25 A England. He had a fabricating operation

1 in Manchester, England.

2 Q What was the reason for you to be in
3 Manchester, England?

4 A I -- he was building some equipment for
5 us, and before shipment we wanted to observe how
6 it worked.

7 Q And was anyone with you at that time?

8 A Yes.

9 Q Who was that?

10 A There were two people with me, my son and
11 a man by the name of George Weiss, I believe, but
12 I'm not positive on that. Because I'm not sure
13 whether he left to go back before I reached there
14 or not. I just don't remember whether he was
15 there or not.

16 Q Well, was he a Thorn Apple Valley
17 employee?

18 A Yeah. He was a purchasing -- responsible
19 for -- vice president of purchasing for Thorn
20 Apple Valley.

21 Q Did there come a time when Thorn Apple
22 Valley entered into a business relationship with
23 David Howard or his company, Unitherm, to prepare
24 any meat products in that fashion?

25 A I can only go from belief. I believe so.

1 I was not there at the time.

2 Q Because it was after that that you then
3 became president of --

4 A Of Armour Swift-Eckrich.

5 Q Okay. When you became president of
6 Armour Swift-Eckrich, and I believe you said that
7 was 1995?

8 A Yes, yes.

9 Q Okay. What relationship did you have
10 with David Howard professionally at that point?

11 A He was just a potential supplier.

12 Q Now, did you enter into any
13 communications with him about this process?

14 A Yeah. I had one of my people, Ted Berry,
15 get in touch with David because we were having --
16 we were at a point of capacity problems in
17 Jonesboro, Arkansas where we were putting the
18 product back into cookhouses as similar I did at
19 TAV, and I was looking -- I knew that David had a
20 process that would speed this up and save us
21 considerable money and less expensive than buying
22 more cookhouses.

23 Q And what did you do to initiate the
24 contact with Howard?

25 A We had David Howard come in and make a

1 presentation to our company on this process.

2 Q And was that -- would that be in 1995, to
3 your best recollection?

4 A Yes, somewhere in later 19 -- mid-1995.

5 Q When you say that you had David Howard
6 come in and make a demonstration, what -- what
7 transpired?

8 A We brought David in. He talked to our
9 people about the process and how -- and what he
10 could do, and we made an arrangement at the time
11 to have a piece of equipment sent in to be tested.

12 Q Arrangements with Mr. Howard?

13 A With Mr. Howard.

14 Q And was it his equipment?

15 A It was his equipment. He brought it into
16 the product development area of our company, and
17 we started testing with it.

18 Q Who were the Armour Swift-Eckrich people
19 that were present when David Howard came to talk
20 to you about it?

21 A I believe it was myself, David Howard,
22 Ted Berry, J. B. Weatherspoon, I believe Frank
23 Carroll (phonetic), who was an operations man who
24 worked for them, but I can't remember anybody else
25 that was out there.

1 Q Where did the meeting take place?

2 A It took place in my office and later in
3 the day down in the product development area, that
4 I can remember.

5 Q Do I have it straight, that your
6 testimony is that you asked him to put equipment
7 in the custody of Armour Swift-Eckrich to test the
8 process?

9 A That is correct. He offered; we
10 accepted.

11 Q And what transpired after that?

12 A We tested the product. And when the
13 first presentation of the product that had been
14 manufactured to that was made I believe I was not
15 present, and it was not as successful as we wanted
16 it to be. And I don't -- I can't remember what
17 was not acceptable about the product. I was --
18 they kept testing, and things just never
19 progressed. One day I said "What's going on with
20 this process," and J. B. Weatherspoon said "Well,
21 we're..." "Well, I want to see product that's
22 made properly and the way it should be done
23 through this equipment." And within a week or so
24 we had another showing of product that was very --
25 that was -- it was excellent product that came out

1 of the equipment.

2 Q When Mr. Howard transported the equipment
3 to Armour Swift-Eckrich for this testing of this
4 process, did he put a time limit on the length of
5 time you could keep the equipment?

6 A I can't remember.

7 Q Okay. How long did Armour Swift-Eckrich
8 keep the equipment?

9 A I couldn't tell you, but it was several
10 months.

11 Q In that period of time what
12 communications, if any, did you have with Mr.
13 Howard about the testing?

14 A Not a lot. It was -- the communications
15 was not -- shouldn't have been from the president
16 of the company; it should have been from the
17 people that were testing the equipment and Ted
18 Berry.

19 Q Did anyone tell you at Armour
20 Swift-Eckrich when you became president that this
21 process that you've described that David Howard
22 demonstrated for you had already been demonstrated
23 to them previously?

24 A No, they did not.

25 Q Did they tell you that they themselves

1 were in the process of developing this -- if
2 you'll forgive me -- process?

3 A They did not.

4 Q When research is being done at Armour
5 Swift-Eckrich while you were there, what was --
6 what was the budgeting process for that?

7 A We didn't have a budgeting process for it
8 per se, we just had to -- if there was money in
9 the budget we applied for that monies to do that.

10 Q Was there any time when you saw any money
11 budgeted for the testing of this process before
12 David Howard came on the scene?

13 A No, I'd never -- I've never seen any.

14 Q The name, and I may not say it right, but
15 it appears to me to be pronounced Prem Singh?

16 A That's correct.

17 Q Is that a correct pronunciation?

18 A Prem Singh, yes.

19 Q And who is Prem Singh?

20 A Prem Singh was a product development
21 personnel that worked for J. B. Weatherspoon on
22 specific projects.

23 Q For Armour Swift-Eckrich?

24 A For Armour Swift-Eckrich. But he
25 reported to J. B. Weatherspoon.

1 Q What was your communication with Prem
2 Singh, if any?

3 A Not a lot. "Hello, good-bye."

4 Q Uh-huh. I take it, based upon your
5 testimony just given, that you didn't have any
6 discussions with Prem Singh where he said "I'm
7 working on this process independently of David
8 Howard?"

9 A No, I had no discussions of that kind.

10 Q There's another name, and I may have this
11 one wrong too, but I believe the last name is
12 Hussein (phonetic). Does that ring a bell?

13 A Not at all.

14 Q Okay. I probably have that one messed
15 up.

16 A I just don't -- you couldn't mess it up
17 enough that I wouldn't know. I don't know anybody
18 by that name.

19 Q Okay. I believe you testified that after
20 you talked to Mr. Weatherspoon the process was
21 developed to your satisfaction?

22 A To my satisfaction it was.

23 Q And what did you do to satisfy yourself?

24 A I tasted that as compared to the product
25 that we were making today and looked at it, and in

1 my view it was as good or better.

2 Q Now, how was it being done separate and
3 apart from David Howard's process? You said
4 you --

5 A Well, it was either -- and I cannot
6 remember -- but it was either from our own lab
7 making it in batch ovens there, or it was shipped
8 up as product from Jonesboro, but I don't
9 remember.

10 Q When you say "batch ovens," what do you
11 mean?

12 A Well, that's an oven that you can put
13 racks in of product to be smoked or resmoked,
14 whatever.

15 Q Is this comparable to the process you
16 described a while ago that takes a long time --

17 A That is correct.

18 Q -- and is costly?

19 A That is correct.

20 Q Now, Jonesboro, where is that?

21 A In Arkansas.

22 Q And what's that got to do with it?

23 A That's a plant that produced turkey
24 breast product, and this was the product that we
25 were working with to reduce the cost of.

1 Q Is that where you received your turkey
2 products?

3 A Most of our turkey products came out of
4 Jonesboro.

5 Q Now, was Jonesboro an Armour
6 Swift-Eckrich operation?

7 A Yes, it was.

8 Q Okay. I think I see what you're saying.
9 So that's where you got the product as it
10 were to test?

11 A That is correct.

12 Q When you did the taste testing, did you
13 actually participate in that?

14 A In the final one, yes.

15 Q And your -- as I understand it, your
16 conclusion was it was --

17 A Satisfactory.

18 Q Yes. And what written documents, if any,
19 were generated through that process?

20 A I'm sure there was a report written.
21 There was always -- whenever I attended there was
22 some sort of report written which I got at a later
23 time.

24 Q Did you keep any contemporaneous record
25 while you were actually engaged in the tasting of

1 the meat?

2 A I believe we each had a form to fill out,
3 but it's several years ago, and I don't remember
4 whether I filled one out or I didn't fill one out.

5 Q After you concluded that the process
6 produced a product that you deemed to be
7 satisfactory, what did you do, if anything, to act
8 on that?

9 A Well, there was a group of people in
10 which included marketing, sales, product
11 development, operations, myself, product
12 development people, and we -- we decided at that
13 meeting while the product a lot of people thought
14 was better than the product we made, it wasn't
15 exactly the same, and the marketing people felt
16 that the risk was too great to go on this tangent,
17 that the consumer was satisfied with our product
18 at that time, and we didn't want to change it.

19 Q And what -- what developed thereafter, if
20 anything, with reference to the process?

21 A We sent the machine back to David Howard.

22 Q Now, when did you next have any
23 involvement with the process, if you did?

24 A I never had anything after that.

25 Q How long after you sent the equipment

1 back to David Howard was it before you left the
2 presidency of Armour Swift-Eckrich?

3 A Oh, I think several months after that.

4 Q What were considered to be the marketing
5 issues that would discourage your marketing people
6 from bringing it to market?

7 A Well, the product was a little more
8 moist, and the texture was slightly different than
9 the product that was on the market, and the color
10 was brighter. It was a better -- to my -- I
11 thought it was a better color, but it looked
12 different than the color that was -- was made.

13 Q Do you know, based upon your current
14 involvement in the meat industry, whether this
15 process is in current use?

16 A At Armour Swift-Eckrich?

17 Q Well --

18 A Yeah, there are people that are using
19 this process.

20 Q And how about generally in the meat
21 industry?

22 A I think it's an accepted process in the
23 meat industry.

24 Q Is it widely used?

25 A I couldn't tell you how widely it is

1 used, but I know that it's used.

2 Q What is --

3 A And I know that other people have gone
4 into possibly manufacturing equipment similar to
5 this.

6 Q What --

7 A Marketing equipment similar to this.

8 Q Excuse me. What is the principal meat
9 product that is produced pursuant to this process?

10 A Well, I think turkey breast and ham,
11 cooked ham.

12 Q Precooked turkey breast and precooked
13 ham?

14 A Ham, right.

15 Q And what is the principal end use of it?

16 A For the deli market. For deli, for
17 slicing at a deli level.

18 Q What about cafeterias, restaurants, that
19 sort of thing?

20 A Food service also, can be used in food
21 service.

22 Q Is it a product that is available to the
23 consumer who walks down the aisle at the
24 supermarket?

25 A At the supermarket -- at the deli counter

1 in the supermarket, yes.

2 Q Is it -- describe the geographic market
3 for me. How expansive is that?

4 A It's across the entire United States from
5 coast to coast. Turk -- turkey breast items is
6 one of the largest selling deli items in the
7 United States.

8 Q Is that a meat product that during your
9 tenure in the -- in the operational end of the
10 meat industry experienced a significant growth?

11 A Oh, absolutely. Tremendous growth.

12 Q And when did that growth occur or start
13 occur -- to occur?

14 A The growth really started in the '80s.
15 '80s, and in the '90s it's been exceptional,
16 especially when health issues became prevalent.
17 It's a low-fat, high-protein item, and marketing
18 is such.

19 Q I have some documents here that I'd like
20 to visit with you about, Mr. Mikelberg. I'm going
21 to mark this first one as Plaintiffs' Deposition
22 Exhibit 1 and let counsel for defendant look at
23 it.

24 (Plaintiffs' Exhibit No. 1 was
25 marked for identification purposes

1 and made a part of the record.)

2 MR. BAILEY: I don't have an extra copy.
3 The only one I have is mine.

4 Q (By Mr. Bailey) Mr. Mikelberg, I'm going
5 to hand you what's marked Plaintiffs' Deposition
6 Exhibit 1. It has a Bates stamp number in the
7 lower right-hand corner of U-03293. What is this
8 Exhibit 1?

9 A This was a letter sent to Eli Dorfman who
10 worked for me. He was the general manager of the
11 deli and smoked meats plant that we -- that Thorn
12 Apple Valley had in Detroit.

13 Q I notice it's dated 15 April, 1993.

14 A Yes.

15 Q And you're copied on it?

16 A Right.

17 Q Do you recall seeing this document?

18 A I don't recall seeing the exact document,
19 but I'm sure that if it came to me I saw it.

20 Q What is the -- what is the letter
21 discussing?

22 A The letter is discussing the process that
23 David talked to me about, about browning the
24 turkey breasts and the advantages for doing it.

25 Q Was this before you saw the process

1 demonstrated in Manchester, England?

2 A Yes.

3 Q What -- what did you do in response to
4 this correspondence from David Howard?

5 A I did nothing.

6 Q What did Mr. Dorfman do, if anything?

7 A I'm sure he talked to David about it, but
8 I wasn't in the meeting at that -- at that
9 particular stage, that I remember.

10 Q When you saw the process demonstrated in
11 Manchester what was the pyrolysis agent that was
12 used?

13 A I couldn't tell you.

14 Q Okay. But some was, some liquid
15 pyrolysis?

16 A I'm -- I'm -- I'm not sure.

17 Q Okay. What is the -- the word pyrolysis,
18 I looked it up because I didn't know what it
19 meant. What does that mean?

20 A It doesn't mean you being paralyzed.
21 It's an agent that will cling to the product and
22 help in the coloration of it.

23 Q Maillose, what does that mean to you?

24 A It's a sugar. Maillose is a -- I think a
25 sugar derivative.

1 Q And is that used in this possess, to your
2 knowledge?

3 A I couldn't tell you for sure.

4 Q Did the brown -- the issue of trials on
5 browning turkey breasts here, and it speaks to the
6 results were highly successful. 98 percent yield
7 in 14 minutes. 94 percent. I misspoke.

8 A Yeah.

9 Q 94 percent yield in 14 minutes.

10 Is that, the use of the word yield, that
11 you had talked about earlier?

12 A Yes.

13 Q That is you get less shrinkage?

14 A Yield is the difference between what you
15 put in and what you got out.

16 Q So if the process is one where you are
17 able to brown these turkey breasts with less
18 shrinkage, that's what we're talking about here?

19 A That is correct.

20 Q Did Thorn Apple Valley ever receive any
21 product that had been done by this process from
22 Unitherm?

23 A I believe so.

24 Q What is Boston Markets?

25 A Boston Markets is -- it's a franchise

1 that sells chicken, and Thorn Apple Valley was
2 making a ham product, a double smoked ham product
3 for them. Double smoked meant that it was cooked
4 and smoked and then resmoked again.

5 Q Now, does the -- does Boston Market mean
6 something about the city of Boston, or is it --

7 A No. It's just a name that was given.
8 Boston Chicken originally, then it was Boston
9 Markets, and it's been sold. I guess McDonald's
10 owns it now.

11 Q What recollection, if any, do you have of
12 Unitherm providing Thorn Apple Valley with hams
13 for sale and distribution to Boston Markets?

14 A None. I was not present, but I knew that
15 they were because I'd opened the account.

16 Q I've got another document that I'm going
17 to mark Plaintiffs' Deposition Exhibit 2.

18 (Plaintiffs' Exhibit No. 2 was
19 marked for identification purposes
20 and made a part of the record.)

21 MR. BAILEY: Let counsel review that. It
22 has two pages.

23 Q (By Mr. Bailey) I hand you Defendant's
24 Exhibit -- excuse me, Plaintiffs' Exhibit 2 and
25 ask you what that is, please?

1 A This was a note I sent to David Howard.
2 And he asked me if I would tell him what my
3 connection with this machine and everything was,
4 and I tried to explain what it was.

5 Q Is this in your handwriting?

6 A This is my handwriting.

7 Q Would you look at the second page of this
8 Exhibit 2 --

9 A Right.

10 Q -- and confirm that that is a typewritten
11 version of your handwritten --

12 A Yes, it is.

13 Q -- note?

14 Okay. There's a -- what apparently was a
15 stick on, and on this particular copy at least it
16 says to Ella, Unitherm, and there's a phone
17 number, a fax number, dated August 18, 2000, from
18 Arnie Mikelberg. Is that your handwriting?

19 A I don't -- this?

20 Q Yes.

21 A No.

22 Q Okay.

23 A It could have been one of the secretaries
24 in my office.

25 Q Yeah. And then on the next page you'll

1 see at the bottom there's another Post-it note.
2 That, I take it, is not in your handwriting
3 either?

4 A No, that is not.

5 Q Okay.

6 A That's from Ella.

7 Q Well, it's easier for me to read the
8 typewritten version than it is your handwriting.

9 A I think I sent Ella this copy and had her
10 type it out, and she sent it. That's why this
11 copy was sent.

12 Q Okay.

13 A I didn't -- I didn't have anybody to do
14 my typing at that time.

15 Q So she typed it or had it typed and sent
16 it back to you?

17 A Right.

18 Q Okay. Looking at the typed version, you
19 say "I have been doing business with Unitherm for
20 eight years, since 1992, while holding the
21 positions of Executive Vice President of Thorn
22 Apple Valley Inc., as President of Armour
23 Swift-Eckrich, and as President of Arnold S.
24 Mikelberg Associates, a consulting company." And
25 I think we've already covered that part of your

1 background.

2 A (Nodding head.)

3 Q And it goes on to say "In 1994 David
4 Howard, President of Unitherm, presented to myself
5 as Executive Vice President of Thorn Apple Valley
6 a method he had developed to quickly smoke ham or
7 turkey on a continuous in-line operation."

8 Let me stop right there for a moment.
9 When you speak of a continuous in-line operation,
10 what do you have reference to?

11 A Well, you make the product that goes on a
12 conveyer, and it's in line through the process
13 until it's a finished item.

14 Q Now, is that --

15 A Rather than batch one truck at a time.

16 Q So is the in-line operation, therefore,
17 am I correct in assuming that's a more efficient
18 operation?

19 A Yes.

20 Q Less cost intensive?

21 A Yes.

22 Q And you go on to say, and I'm quoting
23 again, "Thorn Apple Valley at a later date
24 purchased this equipment from Unitherm to smoke
25 ham product for Boston Markets." And that --

1 A I had heard about it --

2 Q Okay.

3 A -- through my relationships.

4 Q The next -- the third paragraph says
5 "Some time in 1995, at my request, David presented
6 this method for smoking to Armour Swift-Eckrich.
7 We requested that he send the equipment to our
8 product development lab in Downers Grove,
9 Illinois, which was managed by Dr. J. B.
10 Weatherspoon." That's the gentleman that we've
11 talked about earlier, isn't it?

12 A (Nodding head.)

13 Q "The equipment was sent to the lab, where
14 it remained for several months to run tests on
15 turkey breast."

16 This, I take it, is a written record of
17 the testimony you gave that you asked David to
18 come to give you this demonstration of this
19 process?

20 A Right.

21 Q Why -- you might have already spoken --
22 addressed this, Mr. Mikelberg, but I don't pull it
23 up immediately. Why was it that you contacted
24 David Howard to come and demonstrate this?

25 A We had a need for this type of in-line as

1 we were approaching our capacity at Jonesboro, and
2 I wanted to reduce the cost of the product because
3 we were paying an exceptionally high price for
4 turkey breast at that time. So it had a two --
5 two-phase need.

6 Q Yes. You say "After this -- " in the
7 final paragraph, this fourth paragraph, and I
8 quote, "After this period of time, samples of
9 product were presented to sales, marketing, and
10 operations management of Armour Swift-Eckrich for
11 approval. It was decided at this time not to
12 proceed with the project. The product was
13 excellent, but it did not have the exact
14 consistency of current production and the
15 equipment was sent back to Unitherm."

16 And that was -- is that the aspect of
17 marketing that you spoke of earlier?

18 A Right.

19 Q Now, you left Armour Swift-Eckrich in
20 1996, I believe you've said?

21 A Right.

22 Q About what time in that year?

23 A I would -- I still worked for ConAgra,
24 but I left that position. I was doing some work
25 for ConAgra in Europe at that time, and eventually

1 I retired from there.

2 Q I think I might have missed that part of
3 your resume when we spoke earlier. Is -- do I
4 have it right that after you left the presidency
5 of Armour Swift-Eckrich you continued to work for
6 ConAgra?

7 A Yeah. I was executive vice president of
8 refrigerated meats group, and I was responsible
9 for their operations in Europe.

10 Q And how long did you hold that job?

11 A Oh, about a year and-a-half.

12 Q So when was it that you retired from
13 ConAgra?

14 A I'm trying to think of the -- probably
15 three years ago.

16 Q Sometime about '98?

17 A Right.

18 Q Did you -- in the period of time you were
19 president of Armour Swift-Eckrich and thereafter
20 while you were executive vice president of
21 ConAgra, did you ever receive any information that
22 Prem Singh was claiming to be the inventor of this
23 process?

24 A No, sir.

25 Q When did you first learn that he had made

1 that claim?

2 A About the time David Howard asked me if I
3 would do this, write this statement here.

4 Q Okay. How did you learn that?

5 A From David Howard.

6 Q That was -- that was news to you?

7 A Yes. I knew nothing about it.

8 Q And the whole time you were there, nobody
9 had ever mentioned to you, if I understand
10 correctly, with Armour Swift-Eckrich that they
11 were purporting to work on this pro -- to develop
12 this process?

13 A Further, no.

14 Q Okay.

15 MR. BAILEY: Mr. Schroeder, here's the...
16 (Pleadings' Exhibit No. 3 was
17 marked for identification purposes
18 and made a part of the record.)

19 Q (By Mr. Bailey) Mr. Mikelberg, I hand you
20 what I've marked Pleadings' Deposition Exhibit 3
21 and ask you what that is?

22 A It's a letter sent to me by -- I don't
23 know who -- David Howard prior to him coming into
24 visit with us on the in-line smoking.

25 Q What is the date of this letter?

1 A October 9th, 1995.

2 Q And you were president of Armour
3 Swift-Eckrich at that time?

4 A Right.

5 Q Do you recall receiving this letter?

6 A I don't recall exactly receiving the
7 letter, but I'm sure that I did.

8 Q It's addressed to you and Ted Berry,
9 isn't it?

10 A Right.

11 Q He says "There are three areas I believe
12 we can impact the profitability of your company."
13 Number 1 is bacon cooking and handling; number 2,
14 ham cooking using radio frequency; and 3, in-line
15 smoking. And that, as I understand, is what we're
16 talking about here?

17 A That is correct.

18 Q And in the third paragraph it says "The
19 smoke process, (3) we have already developed. We
20 have a question mark on the marketability of it
21 and value your input. The objectives of the trial
22 are as follows," and he goes on to describe what
23 that trial will be, correct?

24 A Right.

25 Q Is this what you were speaking of earlier

1 as the period of time when you had his equipment?

2 A That is correct. This is not -- this is
3 before the period of time that we had his
4 equipment.

5 Q Yes. This is setting it up --

6 A Yes.

7 Q -- as I read it?

8 A Right.

9 Q When it speaks of the smoke process, what
10 is your understanding of the smoke process?

11 A It's the process of heating the product
12 and applying smoke so that the product is -- has
13 the smoked appearance and flavor and smell when it
14 comes out of the process.

15 Q "Applying smoke," being the liquid
16 pyrolysis product?

17 A Right.

18 Q It says the objective trial -- or "The
19 objectives of the trial are as follows: 1)
20 Unitherm will supply a 2 zone Rapidflow for a
21 two-week period." Well, there we see what at
22 least his thought was about how long you'd keep
23 the trial?

24 A Yes.

25 Q I guess the word Rapidflow applies to

1 certain parts of equipment, doesn't it?

2 A Rapidflow was the name of the equipment,
3 I believe, that it was.

4 Q Number 2, "Unitherm seek to prove uniform
5 smoking in less than ten minutes." And again,
6 that's the issue of being it much more quickly
7 done --

8 A Right.

9 Q -- isn't it?
10 Than the current process that was being
11 employed?

12 A That is correct.

13 Q "3) The shrink would be 1-3%" Again,
14 that's improving the yield?

15 A That is correct.

16 Q "4) The color should match or better your
17 existing product." And that's just a -- I guess
18 an aesthetic quality?

19 A That is correct.

20 Q "5) On success of the above, Armour
21 Swift-Eckrich will purchase the line."

22 A We did not make that agreement.

23 Q Okay. That's David negotiating here?

24 A I would -- I would -- I would look at it
25 as a negotiating --

1 Q Yes.

2 A But I made no other -- I made no
3 agreements with him at the time.

4 Q "6) Armour Swift Eckrich will share all
5 test data with Unitherm." Well, did you --

6 A As far as I know they did.

7 Q Or agreed to do that --

8 A Right.

9 Q -- I assume?

10 "7) Unitherm will license Armour Swift
11 Eckrich with the process for a 50% percent of the
12 return on investment, exclusively." That was a
13 proposal too, was it not?

14 A Yeah. I did not particularly care for
15 that proposal.

16 Q Sirs, I look forward to concluding the
17 above in the next few weeks. I believe that the
18 above current -- correctly reflects our agreement.
19 Yours sincerely, David Howard, President.

20 Well, part of that you -- as I understand
21 it, you said "Yes, let's get on with it, and we'll
22 make the other -- we'll determine the rest of it
23 later?"

24 A That's --

25 Q That's correct?

1 A You're putting words in my mouth, but
2 that's correct.

3 Q Yeah.

4 A And --

5 Q And if I say anything that is not
6 correct --

7 A Yeah. I will --

8 Q -- I want you to stop me.

9 A Yeah, I will tell you.

10 Q I'm won't -- I invite you to do so.

11 A I will tell you.

12 Q I'm trying to move it along here a little
13 bit.

14 A Okay.

15 (Plaintiffs' Exhibit No. 4 was
16 marked for identification purposes
17 and made a part of the record.)

18 MR. BAILEY: I have marked as Plaintiffs'
19 Deposition Exhibit 4 another piece of
20 correspondence.

21 Q (By Mr. Bailey) I hand you Exhibit 4, Mr.
22 Mikelberg, which is a letter dated October 16,
23 1995, which is seven days after Exhibit 3,
24 addressed to Prem Singh at Armour Swift-Eckrich.
25 Have you ever seen this document?

1 A I don't know. I don't -- I really don't
2 know whether I've ever seen it. I don't think so.
3 It was sent to Prem Singh; I'm not copied. So I
4 know that I wouldn't have seen it.

5 Q Why would it -- if you know, why would
6 Mr. Howard have sent it to Prem Singh?

7 MR. SCHROEDER: Objection; calls for
8 speculation.

9 Q (By Mr. Bailey) If you know?

10 A I have no idea.

11 Q What was Prem Singh's job at Armour
12 Swift-Eckrich?

13 A He was responsible for certain phases of
14 research and development.

15 Q Well, was -- was he the person that was
16 to take custody of this equipment and do the
17 testing?

18 A I do not know.

19 Q Okay.

20 A I would assume so by the correspondence.

21 Q Mr. Howard writes to Mr. Singh in part as
22 follows after the first full paragraph, The
23 specific criteria for the trial was: 1) Liquid
24 smoke application for turkey breasts, dwell time
25 7.5 minutes at 300 (sic) degrees centigrade is the

1 way I read it. Is that the way you read it?

2 A Yes. 330 degrees centigrade.

3 Q Yes. The internal temperature will rise
4 by 1 degree centigrade, 1 percent shrinkage.

5 What's the significance, if any, to the
6 internal temperature?

7 A We don't want the internal temperature to
8 increase. We want to keep that as low as
9 possible --

10 Q Okay. And why is that?

11 A -- in this type of process.

12 Because we'd had to chill it down again.
13 I'm not interested in cooking it; I'm only
14 interested in developing color on the outside of
15 the product. The faster we can develop the color
16 and the appearance, the better it is for the
17 process, the less shrink you're going to take.
18 You cook the inside, it's going to shrink a lot
19 more.

20 Q And the more cost effective the process?

21 A That is correct.

22 Q Now, you say you have to chill it down
23 again. When it comes out the other end of the
24 Rapidflow there has to be, I suppose, a packaging
25 done, and that --

1 A Yeah.

2 Q -- sort of thing?

3 A It's normally chilled. Goes through some
4 sort of a chill process, a quick chill process --

5 Q Uh-huh.

6 A -- and then vacuum packaging afterward.

7 Q And goes -- then is put out in the
8 market?

9 A That is correct.

10 Q Does it -- does this product have a --
11 how long a shelf life does it have?

12 A Oh, I would say 60 to 90 days.

13 Q Is there any distinction between the
14 shelf life of this product -- of this process and
15 the former way it was being done through the batch
16 ovens?

17 A I think this is -- enhances the shelf
18 life because there's less handling, and there's
19 less time between the time the product is cooked
20 and packaged.

21 Q Uh-huh.

22 A Continuous in line rather than one piece
23 and one batch at a time.

24 Q Number 2 he says browning turkey breasts
25 with skin on, dwell time 15 minutes at 330 degrees

1 centigrade, 5 percent shrinkage, no glaze.

2 What does that have reference to, if you
3 know?

4 A It just has reference to the criteria of
5 when you use a skin-on breast rather than on a
6 skinless breast.

7 Q So does the -- does the first, number 1,
8 relate to skinless?

9 A Well, I would -- in looking at it that's
10 what I would have assumed, but I just have assumed
11 that.

12 Q Okay.

13 A Because in the second he says the "skin
14 on."

15 Q Uh-huh.

16 A He doesn't say that in...

17 Q With longer dwell time, which --

18 A Right.

19 Q -- you would assume would be logical,
20 wouldn't you?

21 And then number 3 it says glazing both
22 hams and turkeys, dwell time 3 minutes at 330
23 degrees centigrade?

24 A Yeah.

25 Q And 4, cooking of full turkeys i.e.

1 nominal 12 to 14 pounds, cook time 1 hour 50
2 minutes at 250 degrees centigrade.

3 That doesn't have anything to do with it,
4 does it?

5 A That's some criteria that was put in
6 there. I didn't read this letter --

7 Q Yeah. Okay.

8 A -- beforehand, so -- when I say
9 "beforehand," I mean before Prem Singh got it or
10 after Prem Singh got it. So this was between Prem
11 Singh and David, and I'm sure Prem Singh discussed
12 items with him on that.

13 Q But if -- again, if I -- if I have your
14 testimony straight in my head, you didn't have any
15 discussions with Prem Singh after this October 16,
16 '95 date about --

17 A These criteria?

18 Q Yeah.

19 A No, not that I can -- not that I can
20 remember.

21 Q Well, did he ever -- and maybe we've
22 covered this already. Did you ever inquire of him
23 how this testing was --

24 A I could have --

25 Q -- going?

1 A -- but I don't -- I can't tell you
2 specific times or when I did.

3 MR. BAILEY: Mr. Schroeder, you've seen
4 the patent, I take it?

5 MR. SCHROEDER: Yes.

6 MR. BAILEY: Okay.

7 (Plaintiffs' Exhibit No. 5 was
8 marked for identification purposes
9 and made a part of the record.)

10 Q (By Mr. Bailey) I hand you what I've
11 marked as Plaintiffs' Deposition Exhibit 5, which
12 is United States Patent, number 5,952,027. Date
13 of patent it says September 14, 1999.

14 Have you seen this patent?

15 A Yes, I have.

16 Q Is this the process that David Howard
17 demonstrated to you?

18 A From me reading the patent it's very,
19 very similar to the process that David Howard
20 presented to us. Technically, as far as reading a
21 patent, I feel that I'm not adjudged to say if
22 it's exactly the same or it isn't. But the
23 principle of this is very, very similar to what
24 was presented by David to me.

25 Q For example, the abstract there on the

1 front page of this document speaks as follows, "A
2 method of producing a crisp surface and imparting
3 a uniform golden-brown color to a precooked whole
4 muscle meat product by coating at least a portion
5 of the surface of a precooked whole muscle meat
6 product with a browning liquid pyrolysis product.
7 The coated surface is then exposed to an energy
8 source that selectively heats the coated surface
9 of the whole muscle meat product at a temperature
10 and for a time sufficient to develop a
11 golden-brown color on the exposed surface, without
12 substantially shrinking the precooked whole muscle
13 meat product."

14 Now, that's --

15 A That's exactly what David presented to us
16 of what he could -- he could do with his process,
17 exactly, this portion of it. But when I get into
18 the technical aspect of it, you know, I can't
19 compare because I don't have David -- what -- I
20 don't have David's exact terminologies either.

21 Q Okay.

22 A The only word I don't know is pyrolysis.
23 Pyrolysis, I've never seen that word. Which means
24 heat transfer of some kind.

25 Q Yeah. On page 8, if you would turn to

1 that, please, sir. At the top of page -- well, at
2 least at number 8. It's not -- it's not -- in
3 this document it's -- just to be as accurate as we
4 can be, it's one, two -- the fifth page, but
5 there's an 8 at the top right-hand column --

6 A Yes. I got --

7 Q -- where it says "I claim."

8 A Right.

9 Q Number 1, A process for browning
10 precooked whole muscle meat products comprising:
11 coating a browning liquid -- coating a browning
12 liquid pyrolysis product onto at least a portion
13 of the surface of a precooked whole muscle meat
14 product; and then exposing the coated surface to
15 an energy source and selectively heating the
16 coated surface of the whole muscle meat product at
17 a temperature and for a time sufficient to develop
18 a golden-brown color on the exposed surface,
19 without substantially shrinking the precooked
20 whole muscle meat product.

21 Now, is that the process that was done?

22 A That's the way I understand it.

23 Q Okay.

24 A Or I understood it.

25 MR. BAILEY: Mr. Mikelberg, let's --

1 let's take a short break here.

2 THE WITNESS: Okay.

3 MR. BAILEY: Go off the record.

4 (A short recess.)

5 Q (By Mr. Bailey) Mr. Mikelberg, at that
6 meeting that you had while you were president of
7 Armour Swift-Eckrich when you had asked David
8 Howard to come to you and show you this process,
9 was P. S. Sampson present?

10 A It seems -- that's one -- that's the one
11 name I couldn't remember. It seems like he was
12 present, but I'm not -- I'm not positive. I only
13 gave you the names of the people that I knew were
14 present at the meeting.

15 Q Who was he?

16 A He was director of engineering, vice
17 president of engineering for Armour Swift-Eckrich.

18 Q Now, while you were president of Armour
19 Swift-Eckrich, what -- what were the total sales
20 of Armour Swift-Eckrich?

21 A 3.2 billion. That's a number that sticks
22 in my head. I don't remember exact facts about it
23 because it's just -- it's not necessary.

24 Q There was a letter identified as
25 Plaintiffs' Deposition Exhibit 4 which was Mr.

1 Howard's letter to Prem Singh dated October 16,
2 1995, about the criteria for the trial that we
3 talked about. Were there -- were there
4 opportunities for Prem Singh to tell you if he was
5 working on this process prior to Unitherm?

6 A Yeah, I would think so.

7 Q And he never did?

8 A He never did. I think he even went to
9 Europe to look at some -- to David's factory in
10 Europe at one time in Manchester to look at
11 equipment there. He never said that he was
12 working on this and he just wanted to check up on
13 it. And he never told me at any time that he was
14 working on this project before or after David's
15 equipment.

16 Q With reference to the product that came
17 out of this process, were there sensory tests
18 performed on it external to Armour Swift-Eckrich?

19 A I do not remember.

20 MR. BAILEY: Thank you, Mr. Mikelberg. I
21 pass the witness.

22 EXAMINATION

23 BY MR. SCHROEDER:

24 Q Mr. Mikelberg, my name is Bob Schroeder,
25 and I represent Swift-Eckrich. I would like to

1 ask you a few questions.

2 A Sure.

3 Q Just to review for a moment. The period
4 of time during which you were employed as
5 president of Swift-Eckrich was approximately what?

6 A It seems -- as I mentioned before, it
7 seems like it was '94 or -- actually '95 through
8 some part of '96.

9 Q So for approximately how many months were
10 you the president of Armour Swift-Eckrich?

11 A It seems like it was about 13 months, 14
12 months. But I -- there was an interim situation
13 where I was president of another small division of
14 them. But it was somewhere around that time.

15 Q So about 13 months starting sometime in
16 1995?

17 A Right.

18 Q And prior to the time that you became the
19 president of Armour Swift-Eckrich you had no
20 knowledge of what was going on within the company,
21 correct?

22 A That is correct.

23 Q Now, we've spoken of a man named Prem
24 Singh. How much time total have you spent with
25 Mr. Singh?

1 A Total?

2 Q Total.

3 A If you totaled it all up, maybe an hour,
4 hour and-a-half.

5 Q And Mr. Singh during that hour and-a-half
6 didn't tell you of everything he'd ever did, did
7 he?

8 A No. But he never said that -- told me at
9 any time what he did on -- previous to this.

10 Q All right.

11 A Stated that.

12 Q Now, were you familiar with all the
13 people -- let me back up for a second.

14 At the time that you were the president
15 of Swift-Eckrich there was a research and
16 development department, correct?

17 A Yes.

18 Q And there were people in that
19 department --

20 A Yes.

21 Q -- on a full-time basis?

22 A Yes.

23 Q Do you have any idea how many?

24 A I thought a hundred.

25 Q Did you know all those people?

1 A No, I did not.

2 Q Did you know what they all did?

3 A No.

4 Q Did you know what they all had done?

5 A No.

6 Q Was there someone known as Dr. Siad

7 Hussein (phonetic) working there?

8 A There could have been. I have no idea.

9 Q Certainly if such a person did work there
10 in the period of '90 to '91 you don't have any
11 idea what he might have been doing?

12 A I have no idea.

13 Q And you have no idea what Mr. Singh was
14 doing during that period of time?

15 A No, sir.

16 Q Now, at one point Mr. Howard made a
17 presentation to Swift-Eckrich, is that right?

18 A Yes.

19 Q And was it your understanding at the time
20 that the purpose of that demonstration was to sell
21 Swift-Eckrich an oven?

22 A Not exactly. To sell an oven or the
23 process?

24 Q To sell a process.

25 A To sell a process and an oven to do that

1 process.

2 Q All right. Now, the oven that Mr. --
3 first of all, Mr. Howard at the time was
4 representing Unitherm, and Unitherm was in the
5 business of selling ovens, correct?

6 A They sold ovens, but they also sold
7 processes that the ovens were able to -- to do.

8 Q Now, there was a particular type of an
9 oven which Mr. Howard was attempting to sell
10 Swift-Eckrich at the time, is that right?

11 A Yes.

12 Q Was that called a Rapidflow oven?

13 A That is correct.

14 Q And were you familiar with the Rapidflow
15 oven?

16 A Yes.

17 Q Now, the Rapidflow oven could be used to
18 do a variety of different things in the food
19 processing industry, is that correct?

20 A Yes.

21 Q Besides just --

22 A Yes.

23 Q -- browning turkey breasts?

24 A Yes.

25 Q And there was no particular process that

1 that oven would perform as opposed to many other
2 processes, isn't that right?

3 A I'm not sure of --

4 Q Let me see if I --

5 A -- the way you're proposing that
6 question.

7 Q -- can make that more clear.

8 This wasn't a situation where you just
9 turn on the oven and perform the process, was it?
10 In other words, you could use that same oven to
11 perform many different processes?

12 A That is correct.

13 Q All right. Now, was there anything --
14 what kind of an oven was this, the Rapidflow oven?

15 A It was an oven that -- was it -- it used
16 convection to -- to -- to do certain things.

17 Q Was it an electric oven?

18 A Yes.

19 Q Were most ovens at that time used in the
20 food processing industry gas ovens?

21 A There were gas ovens used.

22 Q Were there more gas ovens used than
23 electric ovens?

24 A I couldn't tell you.

25 Q So you don't know whether this oven was

1 unusual or not as a result of it being a gas -- an
2 electric oven?

3 A It was an oven that performed a function
4 of a process.

5 Q Now, at the time that you joined
6 Swift-Eckrich as president, that company was
7 already in the business of selling browned turkey
8 breasts, isn't that right?

9 A That is correct.

10 Q And so it had a process for doing that,
11 correct?

12 A They had a process for doing, that is
13 correct.

14 Q And that process was performed at
15 something called the Jonesboro plant?

16 A That is correct.

17 Q Before you met with Mr. Howard did you go
18 to Jonesboro and look at that process?

19 A Yes.

20 Q And what kind of a process was that? Can
21 you describe it to us?

22 A That process was putting the meat onto
23 racks, moving them into stationary batch
24 smokehouses, browning them for several hours in
25 the smokehouse, bringing them out, chilling them

1 and repackaging them.

2 Q Did Swift-Eckrich use a process to brown
3 turkey breasts referred to as the caramelization
4 process?

5 A Yes.

6 Q Is that the process you're talking about
7 now?

8 A Not necessarily.

9 Q Did Swift-Eckrich use a caramelization
10 process in which turkey breasts to be browned were
11 placed on a conveyer which carried those breasts
12 through an oven?

13 A Yes.

14 Q And that was a continuous process, right?

15 A That was a continuous -- a slow,
16 continuous process.

17 Q All right. How did that process differ
18 from the one that Mr. Howard talked about when he
19 put on his demonstration?

20 A That process was considerably slower and
21 didn't turn out the product that was turned out by
22 this oven.

23 Q Well, when you give me that answer, Mr.
24 Howard (sic) you're --

25 A Mikelberg.

1 Q I'm sorry. -- Mr. Mikelberg, you're
2 speaking in terms of the result. But could you
3 tell me what was different about the process
4 itself in technical terms?

5 A No, I can't, because I don't know exactly
6 what that process was.

7 Q Now, we talked today about a pyrolysis
8 product, do you recall that?

9 A Right, I recall.

10 Q Do you know what a pyrolysis product is?

11 A It's something that enhances -- when heat
12 is applied to it, it enhances the action of the
13 heat.

14 Q Now, in the caramelization process that
15 Swift-Eckrich used before the time that Mr. Howard
16 got there, wasn't caramel applied?

17 A Sugars of -- sugars of some kind were
18 applied.

19 Q And that did promote the browning of the
20 process, of the surface, correct?

21 A Not -- not in the same manner at all.

22 Q But it did -- it did --

23 A It tended to bronze the surface of the
24 product but not in the same manner.

25 Q Now, is caramel a pyrolysis product?

1 A I could not tell you that. The first
2 time I heard the term pyrolysis was today.

3 Q Now, when Mr. Howard put on his
4 demonstration, did he use a pyrolysis product?

5 A I cannot remember.

6 Q You looked before at the patent, correct?

7 A That is correct.

8 Q Do you still have that in front of you?

9 A Yes.

10 Q What is the Exhibit Number?

11 A Exhibit Number 5.

12 Q All right. Now, Mr. Bailey directed your
13 attention to the first sentence of the word -- of
14 the abstract. And you see in there it talks about
15 a pyrolysis product?

16 A Right.

17 Q Now, would it be fair to say that you
18 don't know whether the process that Mr. Howard
19 demonstrated complies with that first sentence in
20 using a pyrolysis product?

21 A Well, it was explained to me the
22 pyrolysis product was something to enhance the
23 browning of it.

24 Q Well, I think we just said that caramel
25 enhances the browning, doesn't it?

1 A Is that a -- is caramel a pyrolysis
2 product? As far as I -- as I say, the first time
3 I ever heard the word pyrolysis was today.

4 Q So in other words, you don't know whether
5 the process that Mr. Howard demonstrated used the
6 pyrolysis product or not?

7 A If caramel is a pyrolysis product, then
8 it did use that. It depended upon what flavor
9 they wanted to put onto the product, whether it be
10 smoke or whether it be caramel or whether it be
11 some other glazing-type product that would bake
12 into the surface quickly.

13 Q Are you familiar with a company known as
14 Red Arrow?

15 A Yes.

16 Q What do they make?

17 A Liquid smoke.

18 Q At the time that Mr. Howard put on his
19 demonstration for Swift-Eckrich, had Swift-Eckrich
20 already been speaking with Red Arrow about the use
21 of liquid smoke?

22 A Yes.

23 Q Do you know what manner of using liquid
24 smoke might have been under consideration in
25 connection with those discussions?

1 A I wasn't in the discussions, but I knew
2 there were discussions because we were using
3 liquid smoke from Red Arrow and several other
4 factories.

5 Q Do you know whether ConAgra had discussed
6 with Red Arrow the use of liquid smoke in
7 accordance with the patent that you have before
8 you?

9 A No.

10 Q Prior --

11 A I know nothing -- I know nothing of this
12 patent here that ConAgra had.

13 Q Do you know whether the process that was
14 demonstrated by Mr. Howard differed in any way
15 from processes that Swift-Eckrich had already
16 discussed with Red Arrow?

17 A I could not tell you that. I don't know
18 what they discussed with Red Arrow.

19 Q When Mr. Howard conducted this
20 demonstration was there any agreement on the part
21 of Swift-Eckrich that the process would be kept
22 secret?

23 A Repeat the question.

24 Q Sure. When Mr. Howard put on his
25 demonstration of the process for Swift-Eckrich,

1 did Swift-Eckrich agree that it would keep secret
2 whatever it learned from Mr. Howard?

3 A Not in writing.

4 Q Did it agree not in writing?

5 A It wouldn't have been to our advantage
6 not to keep it secret.

7 Q Well, but that's not exactly my question.
8 My question is, did you make an agreement with
9 Unitherm that you would keep it secret?

10 A No.

11 Q You mentioned earlier in your testimony
12 something about applying what you called liquid
13 smoke, do you recall that?

14 A Yes.

15 Q Now, when you're going to smoke a
16 product, one way to do it is to expose that
17 product to real smoke as a -- as we get from a
18 fire?

19 A That is correct.

20 Q And another way to do it is as a
21 substitute to apply liquid smoke, correct?

22 A Yes --

23 Q Now --

24 A -- in several different manners. It is
25 considered not liquid smoke if it's atomized onto

1 the product.

2 Q Are there advantages to using liquid
3 smoke instead of real smoke?

4 A Yes.

5 Q And what are they?

6 A They're environmental. That
7 environmentally when you use real smoke, it's --
8 the smoke is sent out into the atmosphere. With
9 liquid smoke we don't have this environmental
10 problem. Also liquid smoke in general is easier
11 to control the color.

12 Q Now, you mentioned that at some point you
13 instructed the people at R&D to make use of the
14 Rapidflow oven to produce the best product they
15 could, is that correct, sir?

16 A To take -- refine the process and use it
17 through the oven to make the best product they
18 could.

19 Q But that was your instruction, to make
20 the best product --

21 A Product you could.

22 Q And you were the president of the
23 company, and --

24 A That is correct.

25 Q And they did it, right?

1 A As far as I was concerned they did it.

2 Q Now, in order to do that did they have to
3 use real smoke instead of liquid smoke?

4 A I don't know.

5 Q If they did use liquid smoke would there
6 be anything -- excuse me, if they did use real
7 smoke instead of liquid smoke would there be
8 anything objectionable about that, so far as you
9 know?

10 A Whether they used real smoke or liquid
11 smoke --

12 Q Yes.

13 A -- and it had made the right product?

14 Q Yes.

15 A No, there wouldn't be anything
16 objectionable.

17 Q Well, do you know of any particular
18 problems involved when you try to use real smoke
19 with an electric oven?

20 A No, I do not.

21 Q Is there a fire hazard associated with
22 that?

23 A I do not know.

24 Q Now, you said before that they were able
25 to produce, that is R&D, the research and

1 development department at Swift-Eckrich was able
2 to produce a product that you found to be
3 acceptable, correct?

4 A Yes.

5 Q Do you know whether they were able to
6 produce that product in such a way that it didn't
7 create a fire hazard?

8 A I would assume so.

9 Q Why would you assume that?

10 A Because why would we make a product that
11 had a fire hazard to it?

12 Q Well, you never actually made the
13 product, did you?

14 A I would -- I would think that we would
15 not make -- I would assume that we would not make
16 a product that had a fire hazard to it.

17 Q So if in order to make an acceptable
18 product using the Unitherm oven you had to create
19 a condition in which there was a fire hazard, that
20 would be a reason for rejecting that oven,
21 wouldn't it not?

22 A If it created a fire hazard, yes.

23 Q All right. Have you ever spoken to
24 people outside of Swift-Eckrich who have purchased
25 electric Rapidflow ovens from Unitherm?

1 A No.

2 Q You don't know whether they're satisfied
3 with those ovens or not?

4 A I couldn't tell you whether they're
5 satisfied or not.

6 Q Now, was someone in the research and
7 development department of Swift-Eckrich given the
8 responsibility for evaluating the Unitherm
9 Rapidflow oven?

10 A Yes.

11 Q Who was that?

12 A I would assume it would have been J. B.
13 Weatherspoon.

14 Q Well, now, J. B. Weatherspoon was the
15 head of R&D at the time?

16 A Right.

17 Q Was he --

18 A So I held him responsible.

19 Q But did he actually do the tests and
20 evaluations himself, or did he delegate that to
21 someone?

22 A He delegated that.

23 Q And to who did he delegate that?

24 A I could not tell you for sure.

25 Q Was it Prem Singh?

1 A It's possible.

2 Q Whoever it was that had the
3 responsibility for checking out that oven didn't
4 report to you, did they?

5 A No. They reported to J. B. Weatherspoon.

6 Q You mentioned that Unitherm put on a
7 demonstration of a process to -- for the benefit
8 of Thorn Apple Valley before he came to
9 Swift-Eckrich, is that right?

10 A Repeat that question.

11 Q Sure. Before Mr. Howard conducted a
12 demonstration using his oven for the benefit of
13 Swift-Eckrich he had put on a similar
14 demonstration for Thorn Apple Valley, is that
15 right?

16 A I could not tell you that. Demonstration
17 meaning he brought the oven in and showed what it
18 would do?

19 Q Did he make a presentation to Thorn Apple
20 Valley relating to this oven?

21 A Yes.

22 Q And that was while you were there?

23 A Yes.

24 Q And did he explain the process to which
25 that oven would be used to brown turkey breasts?

1 A That is correct.

2 Q And was that the same process that he
3 presented later on to Swift-Eckrich?

4 A It seems like it was.

5 Q At the time you presented that process to
6 Thorn Apple Valley was there any agreement on the
7 part of Thorn Apple Valley to keep the process a
8 secret?

9 A Not that I know of.

10 Q When Mr. Howard presented this process to
11 Swift-Eckrich, did he suggest using Maillose as
12 the browning liquid?

13 A Not that -- not to me he did not.

14 Q Did he say what browning liquid should be
15 used?

16 A Not to me.

17 Q When the tests using the Unitherm oven
18 were done at Swift-Eckrich, was Red Arrow involved
19 in those tests?

20 A I think so.

21 Q Why were they involved?

22 A I think they were working with David at
23 that time to produce a product for this -- for
24 this oven that would be effective in the oven.

25 Q And was Red Arrow also working with

1 Swift-Eckrich toward that same end prior to the
2 time that Mr. Howard made this presentation?

3 A I could not make that statement.

4 Q You don't know one way or the other?

5 A I don't -- I certainly do not know.

6 Q Are you familiar with patents?

7 A That's not my area of expertise.

8 Q Do you know how to determine what the
9 invention that is claimed in a patent is?

10 A No. As I say, I'm not familiar with
11 patents.

12 Q I'm not suggesting you should be, sir. I
13 just wanted to know.

14 A I don't ask you to make high thoughts,
15 and you don't...

16 Q Now, you said that Mr. Singh, Prem Singh,
17 went to Europe, and while there he visited
18 Unitherm, is that correct?

19 A Right.

20 Q Was it the purpose of that visit to have
21 Mr. Singh evaluate the Unitherm oven?

22 A No. He was studying radio frequency
23 cooking at that time.

24 Q All right. What is radio frequency
25 cooking?

1 A It's a high-speed method of cooking meat.

2 Q It's a different method from the one
3 that --

4 A It has nothing to do with that at all.

5 Q And that was why Mr. Singh went to --

6 A That is correct.

7 Q -- to Europe?

8 At that time was Unitherm trying to
9 develop a radio frequency oven?

10 A Yes.

11 Q Do you know whether they ever perfected
12 that oven to such an extent that it could be used
13 commercially?

14 A No, I don't know.

15 Q Did they offer it to Swift-Eckrich?

16 A They offered an idea to Swift-Eckrich for
17 this.

18 Q Could you explain what you mean by
19 "offered an idea?"

20 A Well, they offered the opportunity or an
21 idea that they could develop a method of radio
22 frequency cooking hams and mold and molds for
23 slicing.

24 Q Now, apart from the demonstration
25 relating to turkey breasts that you've told us

1 about and apart from this radio frequency cooking,
2 did Mr. Howard offer anything else to
3 Swift-Eckrich while you were there?

4 A He offered a method of cooking bacon that
5 combined radio frequency with infrared cooking.

6 Q Was any arrangement made between
7 Swift-Eckrich and Unitherm with respect to that
8 process?

9 A No arrangement was ever finalized.

10 Q And what was the reason for that?

11 A It just was a lot of money, and we didn't
12 want to -- at that time, and we didn't want to put
13 money into new processes and technologies that
14 were not proven.

15 Q Anything -- any other processes that Mr.
16 Howard proposed to Swift-Eckrich other than the
17 ones you've told us about?

18 A Nothing that I can remember.

19 THE VIDEOGRAPHER: Excuse me, Counsel,
20 I'm going to go off the record just briefly --

21 MR. SCHROEDER: Sure.

22 THE VIDEOGRAPHER: -- and change the
23 tape --

24 MR. SCHROEDER: Go ahead.

25 THE VIDEOGRAPHER: -- while you're doing

1 that.

2 (An off-the-record discussion.)

3 Q (By Mr. Schroeder) Were you president of
4 Armour Swift-Eckrich in April of 1995?

5 A April, just -- just beginning there.

6 MR. SCHROEDER: Ask the reporter to mark
7 as Defendant's Exhibit 1 -- oh, I'm sorry.

8 Are we --

9 THE VIDEOGRAPHER: We are back on the
10 record.

11 MR. SCHROEDER: -- a memo of April 11,
12 1995, from Mr. Gutierrez to Mr. Cantu.

13 (Defendant's Exhibit No. 1 was
14 marked for identification purposes
15 and made a part of the record.)

16 Q (By Mr. Schroeder) Are you familiar --
17 excuse me. Have you got the exhibit?

18 A Yeah.

19 Q Are you familiar with -- with this memo?

20 A No.

21 Q Have you ever seen it before?

22 A No.

23 Q Would you look at the part about
24 two-thirds of the way down the page where it lists
25 four numbered items, 1 through 4? Would you tell

1 me if that refreshes your recollection as to any
2 proposals that Unitherm made to Swift-Eckrich?

3 A I can't remember what these were that
4 David -- I just can't remember that.

5 Q Do you remember Mr. --

6 A I remember -- I remember David was asked
7 to do the pre -- the exact weight smoked sausage.
8 The precooked bacon it seems like there was a --
9 an inter -- a stacker that he was working with
10 Armour Swift-Eckrich with.

11 Q Of the four things that are listed here
12 in the memorandum, did Mr. Howard succeed in
13 selling anything to Swift-Eckrich?

14 A I don't remember.

15 Q Do you recall Mr. Howard ever saying that
16 the Unitherm Rapidflow oven was capable of
17 browning turkey breasts without the use of any
18 browning agent?

19 A Specifically I believe he did, but I'm
20 not sure in what connotation.

21 Q Did he make that statement at the time of
22 his first presentation to Swift-Eckrich in 1993?

23 A In '93?

24 Q Yes.

25 A I couldn't tell you.

1 Q He may have?

2 A I couldn't tell you.

3 Q Do you know whether Swift-Eckrich ever
4 tested the Rapidflow oven to find out whether it
5 could, in fact, brown turkey breasts without the
6 use of a browning agent?

7 A It seems that it could.

8 Q You think it could brown turkey breasts
9 without the use of an agent?

10 A Brown, not smoke.

11 Q Was that experiment done at
12 Swift-Eckrich?

13 A I couldn't tell you.

14 Q So you don't know whether Swift-Eckrich
15 ever made a determination as to whether or not the
16 oven actually would do that?

17 A I don't know -- I don't remember whether
18 they did or they did not. I know that I saw it
19 browning when I was in England without any coating
20 on it also.

21 Q Now, you talked about a smoking process.
22 If a process doesn't impart a flavor to the food
23 that we associate with smoke, would you then call
24 it a smoked product?

25 A If there was no smoked flavor?

1 Q Yes.

2 A And the process doesn't use smoke?

3 Q It doesn't use actual smoke.

4 A It uses liquid smoke without a smoked
5 flavor?

6 Q If you want to call that liquid smoke,
7 yes.

8 A If the liquid smoke is applied you can
9 call it smoked.

10 Q Even if it doesn't have a smoked flavor?

11 A Right. The quality of it -- it's
12 strictly quality.

13 Q So according to your understanding of the
14 terminology, some smoked products have a smoked
15 flavor and others do not?

16 A Right. I -- you can smoke it right in a
17 normal batch oven smokehouse and not have a smoke
18 flavor to it.

19 Q I think you mentioned that there were two
20 engineers from Unitherm who assisted in testing
21 the Unitherm oven at Swift-Eckrich, is that true?

22 A No, I didn't mention it. I was asked a
23 question whether -- no, I didn't never mention
24 that there were two engineers.

25 Q Well, were there engineers from Unitherm

1 who assisted Swift-Eckrich in testing Unitherm --

2 A Yes.

3 Q -- Rapidflow oven?

4 Did you ever meet them?

5 A I cannot remember whether I met them or
6 not.

7 Q Are you familiar with a Mr. Gatasec
8 (phonetic)?

9 A No.

10 Q How many were there?

11 A I never met them.

12 Q So you have no way of knowing how many?

13 A No.

14 Q Do you know whether those engineers were
15 brought over from England for this purpose?

16 A No.

17 Q But there were people other than Mr.
18 Howard involved in the part of --

19 A Yes.

20 Q Now, you mentioned that, I believe that
21 Swift-Eckrich kept the Unitherm oven for testing
22 longer than had originally been planned?

23 A That is correct.

24 Q Did Swift-Eckrich pay Unitherm rent for
25 that oven?

1 A Not that I know of.

2 Q Do you know whether they did?

3 A No, I don't. I said not that I know of.

4 Q So they may have?

5 A Yeah. Not that I know of.

6 Q Just one other point I'd like to clear
7 up, Mr. Mikelberg, because I'm a little confused
8 here. I believe you said that at the time of Mr.
9 Howard's first presentation of the Rapidflow oven
10 to Swift-Eckrich, Swift-Eckrich was using a batch
11 process to brown turkey breasts, is that correct?

12 A I said in -- in Jonesboro.

13 Q And at that time Swift-Eckrich was also
14 using a continuous process, not a batch process,
15 to brown turkey breasts, is that correct?

16 A Yes.

17 Q And where was that done?

18 A That was in Minnesota. That was at -- I
19 can't think of the name of the plant.

20 Q Quincy?

21 A No, no, no, no, no, no, no, no.

22 Q Oh.

23 A I'm just --

24 Q But there was a different plant where
25 that --

1 A Yeah.

2 Q -- where that continuous process was
3 used?

4 A Right.

5 Q And that process used caramel?

6 A Right.

7 Q Apart from the use of caramel instead of
8 Maillose, did that process differ in any way from
9 the process that Mr. Howard demonstrated to
10 Swift-Eckrich?

11 A Yes.

12 Q And what was that way?

13 A It was considerably slow. It was a
14 gas-fired oven. It was -- and it did not crisp
15 the outside of it. It was a much longer, lower
16 yielding process. I don't believe it was a
17 convection oven either, so... It was a much --

18 Q On what -- on what do you base your
19 knowledge of that caramelization process?

20 A On having seen it once.

21 Q You saw it one time in what year?

22 A I couldn't tell you.

23 Q And how long did you spend observing this
24 process?

25 A Five minutes.

1 MR. SCHROEDER: I have no further
2 questions.

3 FURTHER EXAMINATION

4 BY MR. BAILEY:

5 Q Mr. Mikelberg, I just want you to help me
6 understand who some of the people are in
7 Defendant's Exhibit 1. Who is R. Cantu?

8 A He was a purchasing agent.

9 Q And the memo is from a Mr. -- well, I say
10 "Mr.," I don't know that.

11 A It's --

12 Q J. Gutierrez?

13 A Yeah. James Gutierrez who was vice
14 president of purchasing at that time.

15 Q It's dated April 11, 1995, and the first
16 paragraph says "A. Mikelberg invited Ted and I to
17 meet David Howard, owner and President of this
18 company today."

19 The earlier exhibits that we marked
20 Plaintiffs' Exhibit, oh, 3 and 4, are dated in
21 October of '95. Do you recall meeting Mr. Howard
22 or inviting Mr. Howard to come to consult with
23 Armour Swift-Eckrich back in April of that year?

24 A Yeah, I must have just come with the
25 company then.

1 Q Yeah.

2 A I don't remember -- I don't recall this
3 exact meeting here, but I'm sure that it's dated
4 and I was there, so...

5 Q Did David Howard come to Armour
6 Swift-Eckrich more than one time?

7 A Yes.

8 Q Who are the gentlemen referred -- or the
9 people referred to in the fourth paragraph down
10 that says "After a brief meeting with Arnie, we
11 reconvened with S. Plichta?"

12 A Plichta. He's an engineer.

13 Q "Prem Singh?"

14 A Prem Singh.

15 Q "And P. E. Wong?"

16 A He's in product development.

17 Q "In Ted's office," I take it that's Ted
18 Berry?

19 A Right.

20 Q "After a short review of some of David's
21 equipment, Ted asked us to get David involved in
22 the following projects." And he lists them there,
23 right?

24 A (Nodding head.)

25 Q And it goes on, "David will have a demo

1 cooking unit at IFFA." What is that?

2 A IFFA. That's that show in Frankfurt.

3 Q That you spoke of?

4 A That's every three years.

5 Q "Which he will ship to PDL." What is
6 PDL?

7 A The product development laboratory.

8 Q And is that Armour Swift --

9 A Yes.

10 Q -- Eckrich's?

11 A That is correct.

12 MR. BAILEY: Let's go off the record for
13 just a moment.

14 (A short recess.)

15 Q (By Mr. Bailey) Mr. Mikelberg, caramel is
16 a stainer rather than a color developer, isn't it?

17 A It doesn't develop a color; it puts a
18 color on.

19 Q Yeah. I mean, you can put caramel on
20 without the need of an oven --

21 A Right.

22 Q -- couldn't you?

23 A But the caramelization of sugars is a
24 darkener.

25 Q It can make it extremely dark for that

1 matter, can't it?

2 A You can make it any color you -- caramel
3 is caramel coloring.

4 Q Would you expect David Howard to trust
5 you to keep in confidence any business secrets
6 that he relayed to you?

7 MR. SCHROEDER: Objection; calls for
8 speculation.

9 Q (By Mr. Bailey) You may answer.

10 A Do I -- do I think -- over the years I've
11 been dealing with David I've never done anything
12 that would suggest anything different.

13 MR. BAILEY: Thank you, Mr. Mikelberg. I
14 have no further questions.

15 FURTHER EXAMINATION

16 BY MR. SCHROEDER:

17 Q Very briefly, Mr. Mikelberg, when Mr.
18 Howard made his presentation to Swift-Eckrich
19 while you were present, the information that he
20 gave to Swift-Eckrich was given to other people
21 besides yourself, is that right?

22 A That is correct.

23 Q How many other people besides yourself?

24 A I couldn't answer.

25 Q Well, was it more than five?

1 A I couldn't answer that.

2 Q Was anything done to instruct any of
3 these other people that they were to keep secret
4 information that they received from Mr. --

5 A I have no -- I have no knowledge of
6 anything.

7 Q You did not give any such instruction?

8 A No, I did not.

9 MR. SCHROEDER: Thank you.

10 MR. BAILEY: Mr. Mikelberg, you may read
11 this deposition and sign it, correct any errors
12 you think the court reporter might have made, or
13 you can waive the reading and signing of it.
14 Which do you choose to do?

15 THE WITNESS: I'll waive -- I'll waive
16 it.

17 MR. BAILEY: Okay. We will offer
18 Exhibits -- Plaintiffs' Exhibits 1 through 5 as
19 exhibits to the deposition.

20 (Deposition concluded.)

21

22

23

24

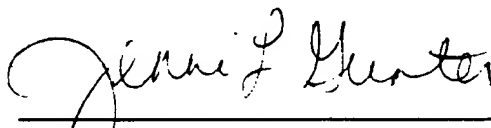
25

C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
 COUNTY OF OKLAHOMA)

I, Jenni L. Gunter, a certified shorthand reporter within and for the State of Oklahoma, certify that ARNOLD S. MIKELBERG was sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the testimony of the witness; that the deposition was taken on September 7, 2001, at 11:20 a.m., at 100 North Broadway, Suite 1700, Oklahoma City, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on
 September 14, 2001.



JENNI L. GUNTER, CSR
 for the State of Oklahoma
 CSR #01745

Jenni L. Gunter
 Certified Shorthand Reporter
 CSR #01745
 Exp. Date: December 31, 2002

UNITHERM STAINLESS STEEL INC.
1680-82 CARMEN DRIVE, ELK GROVE VILLAGE, ILLINOIS, 60007.
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Ref: 403L.DPH

F.A.O. Eli Dorfman

Thorn Apple Valley
3925 Tillman
Detroit
MI 48208

Tel 313 894 6600

15 April 1993

Dear Eli

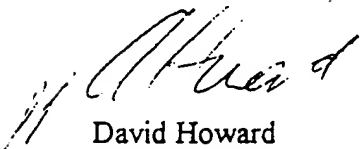
Recently we ran some trials on browning turkey breasts. The results were highly successful. 94% yield in 14 minutes. If you offer this type of product currently or are considering it for the future we would be pleased to run a trial for you.

Has there been any change in the position of the 1000 moulds you required?

I will be setting up a meeting with Bill Hitzelberger soon to present the Tower press with the 40 moulds in it.

Look forward to speaking with you soon.

Yours sincerely


David Howard
PRESIDENT

c.c. Arni Mikelberg



U-03293

PTO-003694

FROM ARNIE MICKELBERG

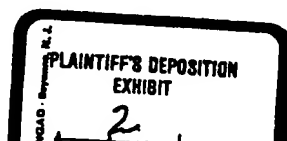
Post-It Fax Note	7871	Date 08/18/00	Page 1
To	ELLA	From	ARNIE MICKELBERG
Company	UNITHERM	Cell	
Phone	580-762-0100	Phone	580-564-0100
Fax	580-762-0100	Fax	580-564-0100

I HAVE BEEN DOING BUSINESS WITH UNITHERM FOR EIGHT YEARS SINCE 1992, WHILE HOLDING THE POSITIONS OF EXECUTIVE V. P. OF THORNSAPPLE VALLEY INC AND AS PRESIDENT OF ARMOUR SWIFT ECKRICH. AND IS PRESIDENT OF ARNOLD S. MICKELBERG M.S. AND A CONSULTING COMPANY.

IN 1994 DAVID HOWARD, MANAGING DIRECTOR TO THORNSAPPLE VALLEY TO MYSELF AS E.V.P. THORNSAPPLE VALLEY A METHOD HE HAD DEVELOPED TO QUICKLY SMOKE HAM OR TURKEY ON A CONTINUOUS IN LINE OPERATION. THORNSAPPLE VALLEY AT A LATER DATE PURCHASE THIS EQUIPMENT FROM UNITHERM TO SMOKE HAM PRODUCT FOR BOSTON MARKET.

SOME TIME IN 1995 AT MY REQUEST DAVID PRESENTED THIS METHOD FOR SMOKING TO ARMOUR SWIFT ECKRICH. WE REQUESTED THAT HE SEND IN THE EQUIPMENT TO OUR PRODUCT DEVELOPMENT LAB. IN DOWNERS GROVE ILL, WHICH WAS MANAGED BY DR. J. B. F. WILKINSON. HE SENT THIS EQUIPMENT TO THE LABS WHERE IT REMAINED FOR SEVERAL MONTHS TO RUN TESTS ON TURKEY BREAST.

AFTER THIS PERIOD OF TIME SAMPLES OF PRODUCT WERE PRESENTED TO SALES, MGMT, OPERATIONS MANAGER, MANAGEMENT OF A. S. E. FOR APPROVAL. IT WAS DECIDED AT THIS TIME NOT TO GO AHEAD WITH THE PROJECT AS THE PRODUCT EXCELLENT IT DID NOT HAVE THE EXACT CONSISTENCY OF CURRENT PRODUCTION AND THE EQUIPMENT WAS SENT BACK TO UNITHERM.



U-04748

PTO-003695

August 18, 2000

I have been doing business with Unitherm for eight years, since 1992, while holding the positions of Executive Vice President of Thorn Apple Valley Inc., as President of Armour Swift-Eckrich, and as President of Arnold S. Mikelberg Associates, a consulting company.

In 1994 David Howard, President of Unitherm, presented to myself as Executive Vice President of Thorn Apple Valley a method he had developed to quickly smoke ham or turkey on a continuous in-line operation. Thorn Apple Valley at a later date purchased this equipment from Unitherm to smoke ham product for Boston Markets.

Some time in 1995, at my request, David presented this method for smoking to Armour Swift-Eckrich. We requested that he send the equipment to our product development lab in Downers Grove, Illinois, which was managed by Dr. J. B. Weatherspoon. The equipment was sent to the lab, where it remained for several months to run tests on turkey breast.

After this period of time, samples of product were presented to sales, marketing, and operations management of Armour Swift-Eckrich for approval. It was decided at this time not to proceed with the project. The product was excellent, but it did not have the exact consistency of current production and the equipment was sent back to Unitherm.

Post-It® Fax Note	7671	Date	8/18	# of pages	1
To	ARNIE	From	ELLA		
On/Out		Co.			
Phone #		Phone #			
Fax #	847-564-0806	Fax #			

U-04749

PTO-003696

UNITHERM FOOD SYSTEMS INCORPORATED
1108 WEST HARTFORD
PONCA CITY, OKLAHOMA 74601
TELEPHONE: 405-762-0197
FAX: 405-762-0199



A WORLD OF STAINLESS STEEL PRODUCTS

October 9, 1995

Arni Mikelberg
Ted Berry
ARMOUR SWIFT ECKRICH
2001 Butterfield Road
Downers Grove, IL 60515

RE: New Innovations

Dear Sirs

There are three areas I believe we can impact the profitability of your company.

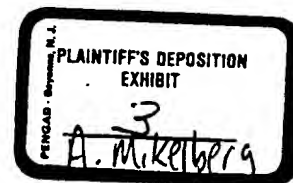
- 1) Bacon cooking and handling.
- 2) Ham cooking using radio frequency.
- 3) In-line smoking.

Your concern on developing 1 and 2 is understood. These are challenging areas and we do need to be cautious. Nonetheless your enthusiasm for improvements in these areas is well aimed. I will have proposals in the next 4-6 weeks.

The smoke process, (3) we have already developed. We have a question mark on the marketability of it and value your input.

The objectives of the trial are as follows:

- 1) Unitherm will supply a 2 zone Rapidflow for a two-week period.
- 2) Unitherm seek to prove uniform smoking in less than ten minutes.
- 3) The shrink should be 1-3%
- 4) The color should match or better your existing product.

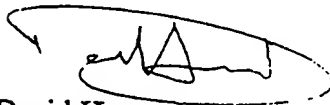


October 9, 1995

- 5) On success of the above, Armour Swift Eckridge will purchase the line.
- 6) Armour Swift Eckrich will share all test data with Unitherm.
- 7) Unitherm will license Armour Swift Eckrich with the process for a 50% of the return on investment, exclusively.

Sirs, I look forward to concluding the above in the next few weeks. I believe that the above correctly reflects our agreement

Yours sincerely,

A handwritten signature, likely of David Howard, is enclosed in an oval. The signature is stylized and appears to be a cursive representation of the name.

David Howard
President

U-03503

PTO-003698

UNITHERM FOOD SYSTEMS INCORPORATED
1108 WEST HARTFORD
PONCA CITY, OKLAHOMA 74601
TELEPHONE: 405-762-0197
X: 405-762-0199

FAXED
10-16-95



A WORLD OF STAINLESS STEEL PRODUCTS

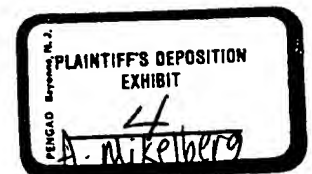
October 16, 1995

Prem Singh
Armour Swift Eckrich
2001 Butterfield Road
Downers Grove, IL 60515

We are shipping the Rapid Flow on Friday, the 20th of October. It will be delivered to you on Monday, the 23rd. Two of Uniterm's engineers will be on site to help install the oven. The arrangement we discussed for the trial was that Armour Swift Eckrich would pay for the transport and commissioning engineers. I would appreciate your assistance in making sure we have a purchase order to invoice this against.

The specific criteria for the trial was:

- 1) Liquid smoke application for turkey breasts.
Dwell time 7.5 minutes at 330o C.
Internal temperature will rise by 1o C.
1% Shrinkage.
- 2) Browning turkey breasts with skin on.
Dwell time 15 minutes at 330o C.
5% shrinkage.
(No glaze.)
- 3) Glazing both hams and turkeys.
Dwell time 3 minutes at 330o C.
- 4) Cooking of full turkeys i.e. nominal 12-14 lbs.
Cook time 1 hour 50 minutes at 250o C.
- 5) Any other products you wish to try.
Philly cheese steak beef.
Sausage links.
Patties, etc.



U-03520

Prem Singh

October 16, 1995

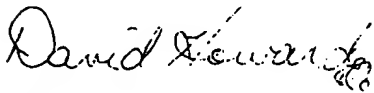
Page 2

Jim Gaydusek and I will help you understand the oven and offer guidance for various products.

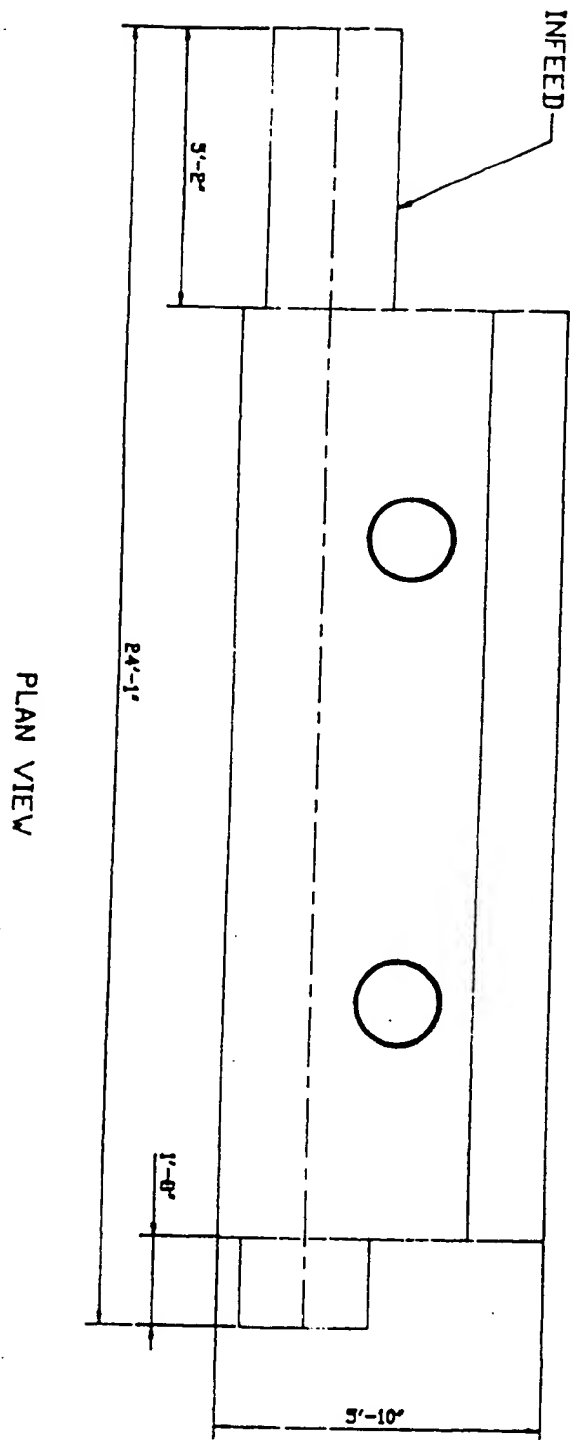
Site Requirements:

Electric	232 KW
Steam	50 kg/hr @ 6-8 bar
Exhaust	1800 cfm/Fan
Foot print	2-zone Rapid Flow

Regards,



David Howard
President



U-03522

PTO-003701

United States Patent [19]

Singh

[11] Patent Number: 5,952,027

[45] Date of Patent: Sep. 14, 1999

[54] METHOD FOR BROWNING PRECOOKED, WHOLE MUSCLE MEAT PRODUCTS

[75] Inventor: Prem S. Singh, Glen Ellyn, Ill.

[73] Assignee: Swift-Eckrich, Inc., Downers Grove, Ill.

[21] Appl. No.: 09/075,608

[22] Filed: May 11, 1998

[51] Int. Cl.⁶ A23L 1/025; A23B 4/044

[52] U.S. Cl. 426/305; 426/103; 426/237; 426/241; 426/250; 426/262; 426/268; 426/270; 426/293; 426/302; 426/315; 426/641; 426/643; 426/644; 426/645; 426/647; 426/652

[58] Field of Search 426/92, 103, 237, 426/241, 242, 248, 250, 262, 268, 270, 293, 302, 305, 315, 641, 643, 644, 645, 647, 652, 240

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 1,502,905 7/1924 Colgin 426/262 X
 3,106,473 10/1963 Hollenbeck 99/229
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 5,429,831 7/1995 Williams et al. 426/92
 5,762,985 6/1998 Eisele 426/315

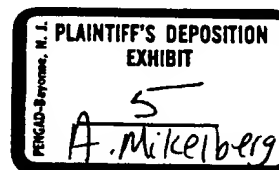
Primary Examiner—Milton Cano

Attorney, Agent, or Firm—Pretty, Schroeder & Poplawski

[57] ABSTRACT

A method of producing a crisp surface and imparting a uniform golden-brown color to a precooked whole muscle meat product by coating at least a portion of the surface of a precooked whole muscle meat product with a browning liquid pyrolysis product. The coated surface is then exposed to an energy source that selectively heats the coated surface of the whole muscle meat product at a temperature and for a time sufficient to develop a golden-brown color on the exposed surface, without substantially shrinking the precooked whole muscle meat product.

36 Claims, No Drawings



METHOD FOR BROWNING PRECOOKED, WHOLE MUSCLE MEAT PRODUCTS

BACKGROUND OF THE INVENTION

1. Field of the Invention

This invention relates to a method for preparing food products. In particular, it relates to a method for browning precooked, whole meat muscle products.

2. Description of Related Art

There exists a strong consumer demand for precooked, whole muscle meat products, such as precooked meat, poultry, and fish products having the appearance, texture, and taste of products that are naturally smoked or baked or roasted in a home-style oven. For example, consumers place a premium on precooked, whole muscle meat products that have the same golden brown color, crisp surface, and moist interior as their home-cooked counterparts.

While the consumer demand for such precooked products is dramatically increasing because of the products' convenience, consumers also demand that these products be healthful, nutritional, and low in fat. Consequently, to satisfy these sometimes conflicting demands, and to be successful in the marketplace, products must not only have the appearance, texture, and taste of their home-cooked counterparts, but they also must be wholesome.

It has proved especially difficult to prepare precooked, whole muscle meat products, such as precooked deli turkey breasts, chicken nuggets, pork chops, and the like having a golden brown color on a crispy surface. A conventional approach has been to deep fry these products in various kinds of edible seed oils such as cotton seed oil, peanut oil, corn oil, coconut oil, sunflower seed oil, etc. at temperatures in the range of from about 300° to about 450° F. (from about 150° to about 230° C.). Deep frying produces a desirable browning on the surface of the meat product through a reaction known as the Maillard Browning Reaction. The Maillard Browning Reaction takes place when common elements of the food product, such as amino acids, sugars, collagen and even minerals, react in a complex manner. Furthermore, deep frying produces a crisp surface while leaving a moist interior.

There are numerous drawbacks to deep-frying foods, however. They include a residual oily flavor and mouthful, as well as the adverse characterization of the product as being a high fat product, because of the oil that remains embedded in the product's surface. Moreover, the oil can degrade over time, thereby, affecting the product's shelf-life and taste. The use of the high-temperature oil also gives rise to safety concerns, by creating the potential for fires or burns.

Another conventional approach to browning precooked, whole muscle meat products begins with the application to the surface of the meat products of certain browning liquids produced by pyrolyzing wood or cellulose, such as "liquid smokes." The pyrolysis products develop a brown color on the product surface when the coated product is heated for about two hours to about six hours in a batch-type oven at a temperature of from about 120° to about 212° F. (from about 50° to about 100° C.) or for about ten minutes to about forty-five minutes in a circulating air oven or impingement air oven at a temperature from about 250° to about 600° F. (from about 120° to about 320° C.). Useful liquid smoke products are disclosed in Hollenbeck U.S. Pat. No. 3,106, 473 and Underwood U.S. Pat. No. 4,876,108. The pyrolysis products, however, impart a smoky taste. Obviously, there

are delicately flavored meat products, such as poultry and fish products, where a smoke flavor is not desired, so that the use of liquid smokes does not provide a viable alternative.

Recently, there have been developed browning liquid pyrolysis products from sugars, such as fructose and dextrose. The smoky taste of the sugar pyrolysis products is greatly reduced, but not always eliminated. These products are described in Underwood U.S. Pat. Nos. 5,397,582, 5,292,541, 5,039,537, and 4,994,297. For example, U.S. Pat. No. 5,397,582 describes coating a precooked sausage and then browning the coated sausage by heating in a microwave oven for about two minutes. While the sausage is browned by the sugar pyrolysis products, the color is not the golden brown associated with products that are naturally smoked or baked or roasted in a home-style oven.

Significant drawbacks remain with the conventional method of browning whole meat muscle products, even with these sugar pyrolysis products. Not only does their residual taste remain factor, but after being heated to temperatures of from about 120° to about 600° F., the meat products lose a significant amount of water that can adversely affect their taste and appearance.

Further, the uniformity of browning obtained with the pyrolysis products and the retention and stability of the brown coating, as well as the color itself, is less than desirable. Still further, because the whole meat muscle products are heated at elevated temperatures for relatively long periods of time, the growth of microbes is facilitated, thus decreasing the shelf-life of the browned whole muscle products. It is a further disadvantage of heating whole meat muscle products at elevated temperatures for relatively long periods of time that large amounts of heat are captured by the product. The product must then be chilled, i.e., the large amount of heat removed. Typically, chilling requires a lengthy, capital-intensive chill tunnel.

Thus, there remains a definite need for an effective method for browning precooked, whole muscle meat products to produce products having the appearance, texture, and taste of their naturally smoked or home-style baked or roasted counterparts. There remains a further definite need for an effective method for crisping and browning the surface of precooked, whole muscle meat products without deep frying. There remains a still further definite need for an effective method for browning mild-flavored or flavorless precooked, whole muscle meat products without imparting a smokey or other unwanted flavor. There remains a still further definite need for an effective method for crisping and browning the surface of precooked, whole muscle meat products that does not cause the products to shrink and their interior to become dried-out. There remains a still further definite need for an effective method for preparing whole muscle meat products having a uniform golden-brown color that is stable and retained throughout the life of the product. There remains a still further definite need for an effective method for crisping and browning a whole muscle meat product that does not adversely affect the shelf-life of the meat product and does not require the removal of great amounts of heat to chill the product. The present invention satisfies these and other needs and provides further related advantages.

SUMMARY OF THE INVENTION

The present invention, which addresses the above needs is embodied in a method of producing a crisp surface and imparting a uniform golden-brown color that is stable and retained throughout the life of a precooked, whole muscle

meat product without imparting an objectionable smoky flavor, without forming an oily surface, without substantially shrinking the meat product, and without adversely affecting the shelf-life of the meat product, but instead, increasing the shelf-life and sensory quality of the product. In some embodiments, a precooked whole muscle meat product, including a poultry product, such as a turkey breast, a chicken breast, or chicken nugget, a ham product, a pork product, or a fish product, is pre-dried to remove free water from its surface. In accordance with the inventive method, at least a portion of the surface of the pre-cooked whole muscle meat product is coated with a browning liquid pyrolysis product. The coated surface is then exposed to an energy source that selectively heats the coated surface of the whole muscle meat product at a temperature and for a time sufficient to develop a golden brown color on the exposed surface, without substantial shrinkage of the precooked, whole muscle meat product.

Suitable energy sources include circulating air ovens, impinging air ovens, laser light sources, medium wavelength energy infra red radiation sources, and sources of microwave radiation. In some embodiments, the energy sources create an environment having a temperature greater than about 60° C. And in some embodiments, the temperature at the core of the meat product is initially less than about 5° C., while after the meat product has been browned, the temperature at the core of the meat product remains at less than about 13° C.

In some embodiments, the browning liquid pyrolysis product is obtained from the pyrolysis of hardwoods or sugars, including dextrose, and from about 0.05 to about 1.0 wt. %, based on the weight of the precooked, whole muscle meat product, of the browning liquid is applied to the surface of the meat product. Also in some embodiments, the browning liquid pyrolysis product contains a masking agent or flavoring enhancing composition. In some embodiments where the whole muscle meat product is a turkey breast, the browning liquid pyrolysis product contains from about 0.5 to about 15 wt. % turkey flavor or turkey broth or a mixture of the two as the masking agent or flavoring enhancing composition.

Other features and advantages of the present invention will become apparent from the following detailed description, which illustrates by way of example, the principles of the invention.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

Any whole meat muscle product can be advantageously browned in accordance with the invention. Representative whole meat muscle products include poultry, meat, and fish products, such as turkey breasts, chicken breasts, chicken nuggets, ham products, pork products, and the like. The whole meat muscle products can be precooked by any conventional method. Typical methods include initially stuffing a raw whole muscle meat product into a polymeric bag and then sealing the bag. Alternatively, the raw whole muscle meat product is formed in a mold. The raw meat product is then cooked in a smoke house, or steam box, or circulating air oven. After cooking, the whole muscle meat product is chilled by showering with cold water followed by cooling with chilled air to reduce its equilibrium temperature to less than about 40° F. (less than about 5° C.). The thus precooked, chilled, whole muscle meat product is then removed from the polymeric bag or mold.

In some embodiments, the precooked, whole muscle meat product is then placed on a continuously moving conveyor

and transported past a series of hot water (e.g., from about 90° to about 212° F.) or steam showers for a period of from about ten to about thirty seconds. The showers remove the gelatin purge formed on the surface of the meat product during cooking. It has been found that the inventive method is more effective if the browning liquid pyrolysis product is applied directly to the surface of the whole muscle meat product and not to an intermediate gelatin layer. Direct application promotes penetration of the browning liquid pyrolysis product into the meat tissue and facilitates the subsequent Maillard Browning Reaction.

After the gelatin purge is removed, the meat product is predried by circulating hot air around the product or by exposing the product to infra-red radiation. It is also been found that when the free water on the surface of the meat product is removed by predrying, the Maillard Browning Reaction is enhanced.

At least a portion of the surface of the thus dried, precooked, whole meat muscle product is then coated with one or more of any suitable browning liquid pyrolysis product, such as the browning liquid pyrolysis products commercially available from Red Arrow Products Company, Inc. Manitowoc, Wis. and described in Hollenbeck U.S. Pat. No. 3,106,473 and Underwood U.S. Pat. Nos. 5,397,582, 5,292,541, 5,039,537, 4,994,297, 4,876,108, which patents are herein incorporated by reference. Products useful in accordance with the inventive method include browning liquids obtained from the pyrolysis of hardwoods such as ST-300 liquid smoke and SELECT 24P liquid smoke both available from Red Arrow Products Company, Inc. Manitowoc, Wis., as well as browning liquids obtained from the pyrolysis of sugars such as MAILLOSE caramel coloring, also available from Red Arrow Products Company, Inc. Manitowoc, Wis.

The concentration of the commercially available products varies depending on the particular browning liquid pyrolysis product, the particular whole muscle meat product to be treated, the particular conditions for the Maillard Browning Reaction, and the desired final color. For example, Maillose is used without any dilution up to about 80 vol. % dilution with water. The higher the concentration of the Maillose or other browning liquid pyrolysis product, the darker golden-brown the final, whole meat muscle product.

In some embodiments, a masking agent or flavoring enhancing composition is included with the browning liquid. For example, in those embodiments where the meat product is a precooked turkey breast, from about 0.5 to about 15 wt. % turkey flavor or turkey broth or a mixture of the two can be added to the browning liquid. Honey and other flavors can also be added to the browning liquid to give a roasted aroma and enhance the flavor of the final product.

The browning liquid is applied to at least a portion of the surface of the precooked, whole muscle meat product by any suitable method, such as by dipping, brushing or spraying. The amount of browning liquid to be applied to the surface will depend on the particular combination of browning liquid, meat product, and color desired. The amount will be readily determinable by one skilled in the art without undue experimentation. Typically, the amount of browning liquid ranges from about 0.05 to about 1.0 wt. %, preferably from about 0.1 to about 0.8 wt. %, and more preferably from about 0.15 wt. % to about 0.3 wt. %, based on the weight of the precooked, whole muscle meat product.

The surface of the meat product is then browned and crisped using an energy source that selectively heats the thus coated surface. In preferred embodiments, the energy source

selectively heats and dehydrates the surface of the meat product by creating an environment having a temperature greater than about 60° C., preferably from about 100° C. to about 290° C., and more preferably from about 150° C. to about 260° C. In those embodiments where the precooked meat product has been kept at its chilled equilibrium temperature of less than about 5° C., the selective heating maintains the core of the meat product at a temperature less than about 13° C., preferably less than about 8° C., and most preferably less than about 5° C.

In one preferred embodiment, the coated meat product is selectively heated and dehydrated using a circulating air oven. In another preferred embodiment, the coated meat product is selectively heated and dehydrated using an impinging air oven. Impinging air ovens cause hot air to be impinged on the top and bottom of the meat product, thereby breaking the boundary layer surrounding the product's surface. Suitable circulating air and impinging air ovens are available from Stein, Inc., Sandusky, Ohio, Convenience Food Systems, Avon, Mass., Heat and Control, Inc., Hayward, Calif., and Procter and Schwartz, Co., Horshau, Pa. Other energy sources for selectively heating and dehydrating the surface of the meat product provide energy in the form of laser light, medium wavelength infra red radiation or microwave radiation.

It has been discovered that the surface of the meat product can be selectively heated and dehydrated by exposing the surface to the energy source for a relatively short length of time. In accordance with the inventive method, a crisp surface having a golden-brown color will develop, without substantial moisture loss of the browned, precooked, whole muscle meat product. In accordance with the inventive process, the moisture loss of the meat product will be less than about 4% and in some embodiments less than about 3% or even less than about 1%, based on the initial weight of the meat product. Consequently, precooked, whole muscle meat products are produced which not only have highly desirable golden-brown color, but have the crisp surface and moist interior associated with naturally smoked or home-cooked products. Furthermore the golden-brown color is uniform and stable and retained throughout the life of the product without imparting an objectionable smoky flavor, without forming an oily surface, without substantially shrinking the meat product, and without adversely affecting the shelf-life of the meat product but instead, increasing the shelf-life and sensory quality of the product.

The following examples are included to further illustrate the invention. They are not limitations thereon.

EXAMPLE 1

A turkey breast was precooked in the following manner. An uncooked turkey breast was injected with a solution containing 82.8 wt. % water, 4.7 wt. % salt, 1.6 wt. % sodium tri-poly phosphate, 7.3 wt. % starch, 2.7 wt. % dextrose, and 0.9 wt. % flavorings. The resulting 36 wt. % injected turkey breast was tumbled and vacuumed packaged in a poly bag, then cooked in a steam box. After chilling to 39.7° F., the bag was removed from the turkey breast; gelatin purge was removed from its surface using a hot water spray; and the turkey was quickly predried using hot air. The precooked, cleaned, and dried turkey breast weighed 6.86 pounds.

A solution containing 300 ml of ST-300 (Red Arrow Co. in Manitowoc, Wis.), 200 ml of Select 24P (Red Arrow Co., Manitowoc, Wis.), and 3600 ml of water was mixed slowly to avoid excess foaming. The resulting browning liquid was

applied to the surface of the turkey breast to form a coating weighing 0.03 pounds (0.4 wt. % based on the weight of the uncoated turkey breast).

The coated turkey breast was then placed in a circulating air oven. The turkey breast was browned with for eight minutes with by circulating air heated to 570° F. past both the top and the bottom of the product. The following temperature measurements were recorded:

Temperature before browning 40° F.

Temperature ¼" below surface during browning 104° F.

Temperature 1" below the surface during browning 85° F.

Core Temperature after Browning 43° F.

The following color measurements were also recorded for the browned turkey breast using a Hunter Lab Color-Meter:

	L*	A*	B*
	52.2	9.6	30

The weight of the browned turkey breast was 6.6 pounds, so that the weight loss was about 3.8%.

EXAMPLE 2

A precooked turkey breast was prepared using the procedure of Example 1. The precooked, cleaned, and dried turkey breast weighed pounds.

A browning liquid was then made of 50% (W/W) Maillose (Red Arrow Co., Manitowoc, Wis.) and water. The precooked turkey breast was dipped in the browning liquid for thirty seconds. The surface of the turkey breast picked up 0.02 pounds of this mixture to form a coating (0.3 wt. % based on the weight of the uncoated turkey breast).

The coated turkey breast was then placed in a circulating air oven. The initial temperature of the turkey breast was 40° F. The turkey breast was then browned with air heated to 535° F. circulated past the top, bottom, and sides of the product. A golden brown color was developed within a period of 5-6 minutes. Immediately after browning the core temperature was still 40° F.

The following color measurements were recorded for the browned turkey breast using a Hunter Lab Color-Meter:

	L*	A*	B*
	50	9.8	30.5

The weight of the browned turkey breast was 6.99 pounds, so that the weight loss during browning was 2.1%.

EXAMPLE 3

A turkey breast was precooked in the following manner. An uncooked turkey breast was injected with a solution containing 82.8 wt. % water, 4.7 wt. % salt, 1.6 wt. % sodium tri-poly phosphate, 7.3 wt. % starch, 2.7 wt. % dextrose, and 0.9 wt. % flavorings. The resulting 45 wt. % injected turkey breast was then tumbled and vacuumed packaged in a poly bag, then cooked in a steam box. After chilling to 39.7° F., the bag was removed from the turkey breast; gelatin purge was removed from its surface using a hot water spray; and the turkey was quickly predried using hot air. The weight of the precooked, cleaned, and dried turkey breast was 9.5 pounds.

The thus prepared turkey breast was submerged for thirty seconds in an undiluted solution of Maillose (Red Arrow Co., Manitowoc, Wis.). The coated turkey breast was then placed in a circulating air oven. The air in the oven was maintained at a temperature of 410° F. The velocity of the air across the coated turkey breast, as measured at the entry zone of the oven, was 3100 feet per minute. The turkey breast was heated for six minutes until a golden-brown color developed. The weight loss after browning was 3%.

The browned product was then chilled in a blast chiller to 40° F. and packaged. The following color measurements were recorded for the browned turkey breast using a Hunter Lab Color-Meter:

L*	A*	B*
53.2	14.3	39.9

EXAMPLE 4

A turkey breast was precooked using the procedure of Example 1. It weighed 7.56 pounds and had a protein content of 18.7 wt. %, a fat content of 18.9 wt. %, a moisture content of 74.3 wt. %, and a salt content of 1.9 wt. %. Color measurements for the precooked turkey breast were recorded and are reported below.

The precooked turkey breast was submerged for one minute in a browning liquid made of 50% (W/W) Maillose (Red Arrow Co., Manitowoc, Wis.) and water. The coated turkey breast was then exposed to a laser marking system manufactured by Synrad Laser Company, Mukilteo, Wash. The system had a 130 watt power source, a wave length of 10.6 microns, and a 370 MM. laser lens. The cycle time for the browning was two minutes.

Color measurements for the browned turkey breast were recorded. Following are the Hunter Lab Color-Meter measurements for both the untreated and the browned turkey breast:

	L*	A*	B*
Untreated	82.1	1.5	14.6
Treated	48.9	11.5	29.8

The weight of the browned turkey breast was 7.50 pounds, so that the weight loss during browning was 0.8%

EXAMPLE 5

A turkey breast was precooked using the procedure of Example 1. A browning liquid was prepared by mixing a 50% (W/W) solution of Maillose (Red Arrow Co. in Manitowoc, Wis.) and water with a turkey broth solution, in a volume ratio of 90:10/Maillose solution:turkey broth solution. The mixture was then applied on the surface of the product. A 0.25% pick up was targeted.

This coated turkey breast was then exposed to medium range infra-red radiation energy. The Hunter Lab Color-Meter measurement for the browned turkey breast were L*=57.1; A*=8.8; B*=30.7. The product loss was less than 2%.

While the invention has been described in connection with its preferred embodiments, it will be understood that it is not intended to limit this invention thereto, but it is intended to cover all modifications and alternative embodi-

ments falling within the spirit and scope of the invention as expressed in the appended claims.

I claim:

1. A process for browning precooked, whole muscle meat products comprising:
 - a) coating a browning liquid pyrolysis product onto at least a portion of the surface of a precooked whole muscle meat product; and then
 - b) exposing the coated surface to an energy source and selectively heating the coated surface of the whole muscle meat product at a temperature and for a time sufficient to develop a golden-brown color on the exposed surface, without substantial shrinking the precooked, whole muscle meat product.
2. The process in accordance with claim 1 wherein the precooked, whole muscle meat product is selected from the group consisting of poultry, meat, and fish products.
3. The process in accordance with claim 2 wherein the precooked, whole muscle meat product is a precooked turkey breast or a precooked chicken breast.
4. The process in accordance with claim 2 wherein the browning liquid pyrolysis product is obtained from the pyrolysis of hardwoods or sugars.
5. The process in accordance with claim 4 wherein the browning liquid pyrolysis product is obtained from the pyrolysis of dextrose.
6. The process in accordance with claim 4 wherein the amount of browning liquid ranges from about 0.05 to about 1.0 wt. %, based on the weight of the precooked, whole muscle meat product.
7. The process in accordance with claim 6 wherein the amount of browning liquid ranges from about 0.1 to about 0.8 wt. %, based on the weight of the precooked, whole muscle meat product.
8. The process in accordance with claim 2 further comprising the browning liquid pyrolysis product contains a masking agent or flavoring enhancing composition.
9. The process in accordance with claim 3 further comprising the browning liquid pyrolysis product contains from about 0.5 to about 15 wt. % turkey flavor or turkey broth or a mixture of the two.
10. The process in accordance with claim 2 wherein the energy source is a circulating air oven, an impinging air oven, a laser light source, a medium wavelength energy infra red radiation source or a source of microwave radiation.
11. The process in accordance with claim 10 wherein the energy source is a circulating air oven or an impinging air oven.
12. The process in accordance with claim 11 wherein the energy source selectively heats the surface of the meat product by creating an environment having a temperature greater than about 60° C.
13. The process in accordance with claim 12 wherein the energy source selectively heats the surface of the meat product by creating an environment having a temperature from about 100° C. to about 290° C.
14. The process in accordance with claim 13 wherein the energy source selectively heats the surface of the meat product by creating an environment having a temperature from about 150° C. to about 260° C.
15. The process in accordance with claim 2 further comprising prior to exposing the meat product to the energy source, the temperature at the core of the meat product is less than about 5° C. and immediately after browning the meat product, the temperature at the core of the meat product is less than about 13° C.
16. The process in accordance with claim 15 wherein prior to exposing the meat product to the energy source, the

temperature at the core of the meat product is less than about 5° C. and immediately after browning the meat product, the temperature at the core of the meat product is less than about 5° C.

17. The process in accordance with claim 1 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

18. The process in accordance with claim 2 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

19. The process in accordance with claim 6 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

20. A process for browning a precooked chicken breast or a turkey breast comprising:

coating at least a portion of the surface of a precooked chicken breast or a precooked turkey breast with from about 0.05 to about 1.0 wt. %, based on the weight of the breast, of a browning liquid pyrolysis product obtained from hardwoods or sugars; and then

selectively heating the coated surface of the breast in an environment having a temperature greater than about 60° C. with energy provided by a circulating air oven, an impinging air oven, a laser light source, a medium wavelength energy infra red radiation source or a source of microwave radiation for a time sufficient to develop a golden-brown color on the coated surface, where the shrinkage of the precooked, whole muscle meat product is less than 4 wt. % based on the initial weight of the meat product.

21. The process in accordance with claim 20 wherein the precooked breast is a precooked turkey breast.

22. The process in accordance with claim 21 wherein the browning liquid pyrolysis product is obtained from the pyrolysis of dextrose.

23. The process in accordance with claim 22 wherein the amount of browning liquid ranges from about 0.15 to about 0.3 wt. %, based on the weight of the breast.

24. The process in accordance with claim 20 further comprising the browning liquid pyrolysis product contains a masking agent or flavoring enhancing composition.

25. The process in accordance with claim 22 further comprising the browning liquid pyrolysis product contains from about 0.5 to about 15 wt. % turkey flavor or turkey broth or a mixture of the two.

26. The process in accordance with claim 23 wherein the energy source is a circulating air oven or an impinging air oven.

27. The process in accordance with claim 26 wherein the energy source selectively heats the surface of the breast by creating an environment having a temperature from about 100° C. to about 290° C.

28. The process in accordance with claim 26 wherein the energy source selectively heats the surface of the breast by creating an environment having a temperature from about 150° C. to about 260° C.

29. The process in accordance with claim 20 further comprising prior to exposing the meat product to the energy source, the temperature at the core of the meat product is less than about 5° C. and immediately after browning the meat product, the temperature at the core of the meat product is less than about 13° C.

30. The process in accordance with claim 28 wherein prior to exposing the meat product to the energy source, the temperature at the core of the meat product is less than about 5° C. and immediately after browning the meat product, the temperature at the core of the meat product is less than about 5° C.

31. The process in accordance with claim 1 wherein the shrinkage of the precooked, whole muscle meat product is less than 4 wt. % based on the initial weight of the meat product.

32. The process in accordance with claim 2 wherein the shrinkage of the precooked, whole muscle meat product is less than 1 wt. % based on the initial weight of the meat product.

33. The process in accordance with claim 21 wherein the shrinkage of the precooked, whole muscle meat product is less than 1 wt. % based on the initial weight of the meat product.

34. The process in accordance with claim 20 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

35. The process in accordance with claim 21 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

36. The process in accordance with claim 22 further comprising predrying the precooked, whole muscle meat product to remove free-water from the product's surface prior to the coating.

* * * * *

**Inter-Office
Mem randum**

Armour Swift-Eckrich

Date April 11, 1995

To R. Cantu

From J. Gutierrez

Copies M. Chaney

Subject Unitherm Stainless Steel, Inc.

A. Mikelberg invited Ted and I to meet David Howard, owner and President of this company today. Arnie has known David for some time and has awarded over \$4 million of business to him while at Thorn Apple Valley.

Unitherm has 120 employees in three plants. Two plants are located in the U.K. and a new 50,000 sq. ft. plant is being prepared in Oklahoma. The company has two business divisions. One division specializes in fabricated stainless steel products such as vats, trolleys, racks, molds, etc. The other division concentrates on mechanical systems to move product and continuous cooking/chilling systems for a broad range of products.

This company specializes in custom applications.

After a brief meeting with Arnie, we reconvened with S. Plichta, Prem Singh and P.E. Wong in Ted's office. After a short review of some of David's equipment, Ted asked us to get David involved in the following projects:

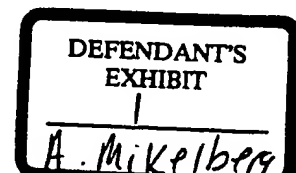
1. Exact weight Smoked Sausage/Cutting, collating and loading. This is the top priority. P.E. and David are to travel to Kalamazoo in the next few weeks so David can study the process. There will be a follow-up meeting after this visit.
2. Cold smoking of Turkey Breasts.
3. Automated handling of pre-cooked bacon into the packaging machine.
4. Smoked Ham production, Honey Creek.

David will have a demo cooking unit at IFFA which he will ship to PDL after the show so we can do product testing.

Attached is literature on the range of equipment offered.

In addition to the above activities, let's have David quote on our fabrication needs as they arise. We should also have him give us a test quote for vats for the new plant.

JFG/lg



PTO-003708



UNITHERM
STAINLESS STEEL INC.

DAVID HOWARD
PRESIDENT

1680-82 CARMEN DRIVE,
ELK GROVE VILLAGE,
ILLINOIS 60007 U.S.A.
TELEPHONE: (708) 806 0454
FAX: (708) 806 1321



UNITHERM
STAINLESS STEEL LIMITED

DAVID HOWARD
MANAGING DIRECTOR

BAILEY ROAD,
OFF ASHBURTON ROAD WEST,
TRAFFORD PARK, MANCHESTER
M17 1SA
TELEPHONE: 061 848 8954
FACSIMILE: 061 848 8955

1. Willow Brook Foods objects insofar as the subpoenas require the production or disclosure of any privileged communication or of an attorney's work-product on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure.
2. Willow Brook Foods objects insofar as the subpoenas require disclosure of materials that would be cumulative of other discovery produced.
3. Willow Brook Foods objects insofar as the subpoenas require disclosure of materials that would be duplicative of other discovery produced.
4. Willow Brook Foods objects on the grounds that the subpoenas would impose an undue burden because they require disclosure of materials irrelevant to the issues underlying the request.
5. Willow Brook Foods objects insofar as the subpoenas require disclosure of trade secrets or other confidential, proprietary business materials protected by FED.R.CIV.P. 45(c)(3)(B).
6. Willow Brook Foods objects to the production of "all documents" on the grounds that such a requirement is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Willow Brook Foods also objects insofar as the subpoenas require the production of documents outside the possession, custody or control of Willow Brook Foods and to the extent that the subpoenas also require Willow Brook Foods to account for documents that are no longer in its possession, custody or control or in existence.

Without waiving the general objections and the objections set forth in response to the specific requests for documents to be produced, Willow Brook Foods responds, within the limits of these objections, as set forth below.

RESPONSES AND OBJECTIONS TO DOCUMENTS REQUESTED BY PLAINTIFFS'
NOTICE TO TAKE DEPOSITION (EXHIBIT A)

REQUEST NO. 1.

Any and all documents and information regarding reduction to practice of the process which Unitherm sold to Hudson Foods now knows as Willow Brook Food, Inc.

RESPONSE TO REQUEST NO. 1.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods further objects that the request fails to define with reasonable particularity the phrase "regarding reduction to practice" or the information Plaintiffs seek.

REQUEST NO. 2.

Any and all documents relating to an offer for sale of product produced by the process and equipment sold to you by Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 2.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome (i.e., it presumably seeks all invoices, shipping records, accounting records, receipts, etc.), and is not reasonably limited in time or scope.

REQUEST NO. 3.

Any and all documents relating to the purchase of the process and equipment from Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 3.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods further objects that the request fails to define with reasonable particularity the information Plaintiffs seek.

REQUEST NO. 4.

Any and all documents relating to the purchase and installation of the process and equipment sold to you by Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 4.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods further objects

that the request fails to define with reasonable particularity the phrase "installation of the process" or the information Plaintiffs seek.

REQUEST NO. 5.

Any and all accounting information and the like relating to the product produced by the process and oven which has been sold to third parties including all inventory control information, applicable dates and invoices.

RESPONSE TO REQUEST NO. 5.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods further objects that the request fails to define with reasonable particularity the phrase "accounting information and the like" or the information Plaintiffs seek.

RESPONSES AND OBJECTIONS TO DOCUMENTS REQUESTED BY PLAINTIFFS'
NOTICE TO TAKE DEPOSITION (EXHIBIT A)

REQUEST NO. 1.

All documents that mention, evidence, or reflect any of the subjects of testimony described in Exhibit A.

RESPONSE TO REQUEST NO. 1.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope (i.e., the request potentially seeks all contracts, invoices, receipts, correspondence, phone records, shipping and distribution records, accounting records, etc.). Willow Brook Foods further objects to this request to the extent it seeks privileged materials or proprietary business information, including documents protected by the attorney-client privilege, the work product privilege.

REQUEST NO. 2.

All documents that mention, evidence, reflect negotiation of, or constitute any confidentiality agreement between Willow Brook Foods, Inc. and/or Hudson Foods, Inc., on the one hand, and Unitherm Food Systems, Inc., on the other hand.

RESPONSE TO REQUEST NO. 2.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods further objects to this request to the extent it seeks privileged materials or proprietary business

information, including documents protected by the attorney-client privilege, the work product privilege.

REQUEST NO. 3.

All documents that mention, evidence, or reflect Willow Brook Foods, Inc.'s and/or Hudson Foods, Inc.'s satisfaction or dissatisfaction with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 3.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope.

REQUEST NO. 4.

All documents that mention, evidence, or reflect customer complaints regarding any product made with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 4.

Willow Brook Foods objects to this request on the grounds that it is overly broad and unduly burdensome, and is not reasonably limited in time or scope. Willow Brook Foods accepts returned items that may reflect a number of customer complaints, including complaints unrelated to the subject matter of this lawsuit.

REQUEST NO. 5.

All documents that mention, evidence, or reflect the return to Willow Brook Foods, Inc. and/or Hudson Foods, Inc. of any product made with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

RESPONSE TO REQUEST NO. 5.

See response to Request No. 4 above.

Respectfully submitted,

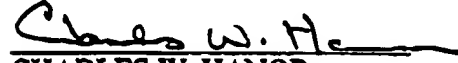
AKIN, GUMP, STRAUSS, HAUER & FELD,
L.L.P.

300 Convent Street, Suite 1500

San Antonio, Texas 78205

(210) 281-7011

(210) 224-2035 (FAX)



CHARLES W. HANOR

State Bar No. 08928800



ATTORNEY FOR WILLOW BROOK FOODS,
INC.

CERTIFICATE OF SERVICE

I certify that on the 12th day of October 2001, a true and correct copy of the foregoing was served by first-class mail on the following:

Burck Bailey
Greg A. Castro
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102-8820

Dennis D. Brown
Fellers, Snider, Blankenship, Bailey & Tippens
321 South Boston, Ste. 800
Tulsa, OK 74103-3318

Robert D. Tomlinson
Keith D. Tracy
McKinney & Stringer
Corporate Tower
101 North Robinson Ave., Ste. 1300
Oklahoma City, OK 73102-5504

Robert A. Schroeder
Howard A. Kroll
Christie, Parker & Hale
350 W. Colorado Blvd.
Pasadena, CA 91105

John P. Passarelli
David H. Roe
McGrath, North, Mullin & Kratz
222 South Fifteenth Street, Ste. 1400
Omaha, NE 68102

Charles W. Hanor
Charles W. Hanor

W. J. [Signature]
[Signature]

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITHERM FOOD SYSTEMS, INC.,
a Illinois corporation; AND
JENNIE-O FOODS, INC.,
a Minnesota corporation,

Plaintiffs,

v.

SWIFT-ECKRICH, INC. d/b/a
CONAGRA REFRIGERATED
FOODS, a Delaware corporation,

Defendant.

Case No. CIV-01-347-C

NOTICE TO TAKE DEPOSITION

TO: All Parties of Record

PLEASE TAKE NOTICE that Plaintiff, Unitherm Food Systems, Inc. and Jennie-O Foods, Inc., will take the deposition upon oral examination of Hudson Foods, Inc. now known as Willow Brook Food, Inc. ("Willow Brook") through such officers, directors, managing agents or other persons as may be designated by the deponent pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. The deposition will take place at the offices of Willow Brook, 405 N. Jefferson, Springfield, Missouri 65851, beginning at 1:30 p.m. on October 17, 2001, and will continue from day to day until completed. The deposition will be taken before a notary public or other officer authorized by law to administer oaths. The deposition may be videotaped.

Ex. A

OCT 09 2001

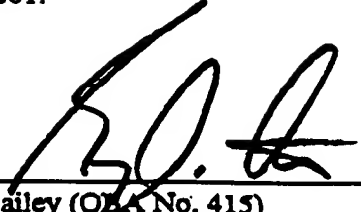
PTO-003717

Please take further notice that pursuant to Fed. R. Civ. P. 30(b)(6) Willow Brook is required to designate one or more officers, directors, managing agents or other persons who consent to testify on its behalf. The matters upon which examination is requested and as to which the deponent(s) will be examined are those items listed below:

1. Any and all documents and information regarding reduction to practice of the process which is the subject of the patent.
 2. Any and all documents relating to offer for sale of product produced by the process and oven sold to you by Unitherm Food Systems, Inc.
 3. Any and all documents relating to the purchase of the process and equipment from Unitherm Food Systems, Inc.
 4. Any and all documents relating to the installation of the process and equipment produced by or sold to you by Unitherm Food Systems, Inc.
-
5. Any and all accounting information and the like relating to product produced by the process and oven which have been sold to third parties including all Pack Code dates and purchase orders and bills of lading.

YOU ARE INVITED TO ATTEND AND CROSS-EXAMINE.

DATED this 4 day of October, 2001.



Burck Bailey (OBA No. 415)
Greg A. Castro (OBA No. 11787)
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway, Suite 1700
Oklahoma City, Oklahoma 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

-and-

Dennis D. Brown (OBA No. 13662)
Fellers, Snider, Blankenship, Bailey & Tippens
321 South Boston, Suite 800
Tulsa, OK 74103-3318
Telephone: (405) 599-0621
Facsimile: (405) 583-9659

Attorneys for Plaintiffs, Unitherm Food Systems, Inc.
and Jennie-O Foods, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of October, 2001, a true and correct copy of the foregoing was served via Facsimile and U.S. Mail, postage prepaid thereon, to the following:

Robert D. Tomlinson
Keith D. Tracy
McKinney & Stringer
Corporate Tower
101 North Robinson Ave., Suite 1300
Oklahoma City, OK 73102-5504
Telephone: (405) 239-6444
Facsimile: (405) 239-7902

Robert A. Schroeder
Howard A. Kroll, Esq.
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Telephone: 626-795-9900
Facsimile: 626-577-8800

John P. Passarelli
David H. Roe
McGrath, North, Mullin & Kratz
222 South Fifteenth Street, Suite 1400
Omaha, NE 68102
Telephone: 402-341-3070
Facsimile: 402-341-0216

Attorneys for Defendant



Greg A. Castro

122381.1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC.,
an Illinois corporation; and
JENNIE-O FOODS, INC.,
a Minnesota corporation,

Plaintiffs,

v.

SWIFT-ECKRICH, INC. d/b/a
CONAGRA REFRIGERATED
FOODS, a Delaware corporation,

Defendant.

Case No. CIV-01-347-C

AMENDED SUBPOENA DUCES TECUM

TO: Willow Brook Food, Inc.
c/o Charles Hanor, Esq.
300 Convent, Suite 1500
San Antonio, TX 78205

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list of documents or objects): See Exhibit "A" attached hereto

PLACE

DATE AND TIME

Willow Brook Food, Inc.

405 N. Jefferson, Springfield, Missouri 65851

October 17, 2001, 1:30 p.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.
PREMISES DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matter on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for Plaintiffs

October 4, 2001

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg A. Castro, Fellers, Snider, Blankenship, Bailey & Tippens, 100 N. Broadway, Suite 1700, Oklahoma City, OK 73102-8820; Telephone: (405) 232-0621

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

PTO-003721

EXHIBIT "A"

Please produce the following documents to the place stated above and provide them to Unitherm Food Systems, Inc. and Jennie-O Foods, Inc. for inspection and copying.

- 1. Any and all documents and information regarding reduction to practice of the process which Unitherm sold to Hudson Foods now known as Willow Brook Food, Inc.**
- 2. Any and all documents relating to an offer for sale of product produced by the process and equipment sold to you by Unitherm Food Systems, Inc.**
- 3. Any and all documents relating to the purchase of the process and equipment from Unitherm Food Systems, Inc.**
- 4. Any and all documents relating to the purchase and installation of the process and equipment sold to you by Unitherm Food Systems, Inc.**
- 5. Any and all accounting information and the like relating to product produced by the process and oven which has been sold to third parties including all inventory control information, applicable dates and invoices.**

122379.1

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by th
UNITED STATES DISTRICT COURT
Western DISTRICT OF Oklahoma

Unitherm Food Systems, Inc. and Jennie-
O Foods, Inc.

SUBPOENA IN A CIVIL CASE

V.
Swift-Eckrich, Inc. dba Conagra
Refrigerated Foods

CASE NUMBER: CTV-01-347-C

TO: Willow Brook Foods, Inc.
c/o Charles Hanor, Esq., Akin, Gump, Strauss, Hauer & Feld, LLP
300 Convent Street, Suite 1500, San Antonio, TX 78205

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case regarding the subjects of testimony described in Exh. A.

PLACE OF DEPOSITION Willow Brook Foods, Inc. 405 N. Jefferson, Springfield, MO 65851	DATE AND TIME October 17, 2001 2:30 p.m.
--	--


☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
See Exh. B.

PLACE	DATE AND TIME
-------	---------------

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	October 8, 2001

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Howard A. Kroll, Christie, Parker & Hale LLP, counsel for Defendant
350 W. Colorado Blvd., 5th Floor, Pasadena, CA 91109 (626) 683-4521

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

If action is pending in district other than district of issuance, state district under case number.
KACOMONCSA\FORMS\CIVS\SUBP.WPD January 24, 2000 (2:52pm)

Ex B

AO-88

10/08/01 TUE 14:10 [TX/RX NO 8788] 003

PTO-003723

Exhibit "A" to Subpoena

- a. Negotiation and/or execution of any confidentiality agreement between Willow Brook Foods, Inc. and/or Hudson Foods, Inc., on the one hand, and Unitherm Food Systems, Inc., on the other hand.
- b. Willow Brook Foods, Inc.'s and/or Hudson Foods, Inc.'s satisfaction or dissatisfaction with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.
- c. Customer complaints regarding any product that was made using any process, equipment, and/or oven from Unitherm Food Systems, Inc.
- d. Return to Willow Brook Foods, Inc. and/or Hudson Foods, Inc. of any product that was made with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

HAK PAS386174.1-9-10/01 6:19 PM

10/09/01 TUE 14:10 [TX/RX NO 8788] 004

PTO-003724

Exhibit "B" to Subpoena

1. All documents that mention, evidence, or reflect any of the subjects of testimony described in Exhibit A.

As used in herein, the term "document" is used in a comprehensive sense and refers to, without limitation, all correspondence, letters, e-mail, memoranda, handwritten notes, reports, proposals, Power Point slides or other presentation materials, diaries, calendars, contracts, checks, invoices, accounts, accounting records, notes of meetings or telephone conversations, recordings, and all hand written, typed, printed, photocopied, photographed, faxed, telexed or otherwise visually, mechanically or electronically reproduced materials, whether copies or originals, in whatever form.

2. All documents that mention, evidence, reflect negotiation of, or constitute any confidentiality agreement between Willow Brook Foods, Inc. and/or Hudson Foods, Inc., on the one hand, and Unitherm Food Systems, Inc., on the other hand.

3. All documents that mention, evidence, or reflect Willow Brook Foods, Inc.'s and/or Hudson Foods, Inc.'s satisfaction or dissatisfaction with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

4. All documents that mention, evidence, or reflect customer complaints regarding any product made with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.

5. All documents that mention, evidence, or reflect the return to Willow Brook Foods, Inc. and/or Hudson Foods, Inc. of any product made with any process, equipment, and/or oven purchased from Unitherm Food Systems, Inc.